Human Rights, Development and Foreign Policy: Canadian Perspectives

edited by Irving Brecher

Centre for Developing-Area Studies
Centre d'études sur les régions en développement

Canadian Human Rights Foundation
Fondation canadienne des droits humains

The Institute for Research on Public Policy
L'Institut de recherches politiques

Centre for Developing-Area Studies, McGill University

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L'Institut de recherches politiques

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Foreword

Canadian foreign policy has undergone intensive review over the past few years. The role of human rights has been a focal point of discussion—with the federal government, parliament, and the private sector generating a host of ideas and suggestions for improvement and reform.

Much of the debate has had its roots in international activities leading up to and marking the fortieth anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations in December 1948. Coupled with this has been a growing recognition of the special significance and urgency of human rights issues in the context of Third World development.

The McGill University Centre for Developing-Area Studies and the Canadian Human Rights Foundation were pleased to co-sponsor a March 1988 symposium on human rights, development, and Canadian foreign policy. They take pleasure, as well, in lending support to the follow-up publication of this book. As noted in the Editor's Introduction below, this is meant to be more than the conventional volume of proceedings: several papers were especially commissioned after the symposium, and a great deal of care has been taken to broaden and deepen its coverage.

It is hoped that the reading audience will extend far beyond Canada and the other developed countries. Just as Canadians are becoming increasingly appreciative of the human rights challenge, so have Third World countries become increasingly aware of the expanding "human rights" dimension in Canadian foreign policy. The present volume can make a valuable contribution to better understanding at home and broad.

Mindful of this mission, the Institute for Research on Public Policy is pleased to publish the book, and to thank Professor Irving Brecher and his colleagues for bringing an important project to fruition.

Needless to add, the views expressed in this volume are those of the individual authors, and do not necessarily reflect opinions associated with the staff or boards of directors of the Institute, the McGill Centre or the Canadian Human Rights Foundation.

Warwick Armstrong
Director
McGill Centre for Developing-Area Studies

Suzanne Birks
President
Canadian Human Rights Foundation

Rod Dobell
President
Institute for Research on Public Policy

October 1989

Avant-propos

Ces dernières années, la politique extérieure du Canada a été l'objet d'une révision importante. La place des droits de la personne a constitué un point focal du débat, le gouvernement fédéral, le Parlement et le secteur privé apportant une foule d'idées et de suggestions visant à l'améliorer et à la réformer.

Une bonne partie de ce débat a pris racine dans les activités internationales qui conduisaient et soulignaient le quarantième anniversaire de l'adoption par les Nations Unies de la Déclaration universelle des droits de l'Homme, en décembre 1948. A cela s'est greffé le fait de reconnaître de plus en plus la signification spéciale et l'urgence des questions relatives aux droits de la personne en lien avec le développement dans les pays du Tiers-Monde.

Le Centre d'études sur les régions en développement de l'université McGill et la Fondation canadienne des droits humains ont été heureux de parrainer un symposium sur les droits humains, le développement et la politique extérieure du Canada, tenu en mars 1988. Ils ont aussi été heureux de prêter leur concours à cet ouvrage, qui y fait suite. Tel que l'indique l'introduction de l'éditeur, plus bas, ce livre est conçu pour être bien plus que ne le sont, traditionnellement, les actes d'un colloque: plusieurs articles ont été commandés après le symposium et on a pris soin d'en élargir et d'en approfondir le champ d'étude.

Nous espérons que nos lecteurs proviendront de bien plus loin que du Canada et des autres pays développés. Au moment où les

Canadiens deviennent davantage sensibles au défi posé par les droits de la personne, les pays du Tiers-Monde eux aussi deviennent de plus en plus attentifs à la dimension des droits de la personne, en pleine expansion au sein de la politique extérieure du Canada. Nous croyons que le présent livre peut apporter une contribution valable afin mieux comprendre cette situation, ici et à l'étranger.

Avec cette mission en tête, l'Institut de recherches politiques est heureux de publier ce livre et remercie le professeur Irving Brecher et ses collègues pour avoir mené à terme cet important projet.

Est-il besoin de préciser que les vues exprimées dans ce volume représentent celles de leurs auteurs et ne réflètent pas nécessairement les opinions du personnel ou du comité de direction de l'Institut, du Centre d'études de McGill ou de la Fondation canadienne des droits humains.

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Rod Dobell
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Octobre 1989

Acknowledgements

More than two years have passed since the planning stage for the "human rights" symposium and the book that would follow. I have become indebted to many individuals and organizations along the way.

Let me first express my gratitude to the McGill University Centre for Developing-Area Studies and the Canadian Human Rights Foundation (CHRF) for their sponsorship and unflagging support. I owe special thanks, as well, to the Canadian International Development Agency (CIDA), Canada's Department of External Affairs, the federal Department of the Secretary of State, the International Development Research Centre (IDRC), the McGill Faculty of Arts, and the McGill Faculty of Graduate Studies and Research; without their financial assistance, it would not have been possible to carry out this project. For their encouragement and support, I wish, also, to thank McGill International and the Quebec Ministère des relations internationales.

Ultimately, of course, it is individuals who make the difference. My thanks to McGill Vice-Principal Dr. Samuel Freedman for participating in the symposium; and to McGill Professor John Humphrey, former CHRF Executive Director Stanley Urman, and Assistant Director Marnina Gonick, for their invaluable help in planning and organizing the symposium. Then, too, I much appreciate the contributions made by those who chaired its various sessions:

McGill Principal David Johnston and McGill Professors Julius Grey and Dale Thomson; Professor Ivan Bernier of Université Laval; Jean Fournier, former board chairman of CHRF; Allan McChesney, an Ottawa consultant on human rights; Robert Miller of the Parliamentary Centre for Foreign Affairs and Foreign Trade (Ottawa); Dr. Gerald Schmitz of Canada's Library of Parliament; and the late Professor Richard Salisbury, Dean of the McGill Faculty of Arts. A word of thanks, also, to two of the symposium panelists: Professor Gisèle Côté-Harper of Université Laval; and the Honourable Nic Leblanc, MP (Ottawa).

I am grateful to CIDA Vice-President Lewis Perinbam, and to Deputy Secretary Robert Robertson of IDRC. They provided advice, encouragement, and assistance in the crucial formative stages of this venture.

No one has been more supportive than Dr. Suzanne Birks, president of the Canadian Human Rights Foundation. In countless ways, she helped immeasurably to ensure that this book would see the light of day. My thanks, as well, to the Honourable Russell Williams, MNA (Quebec), and formerly executive director of CHRF, for his cooperation in the final stages of producing a publication agreement with the Institute for Research on Public Policy. In this context, it was a pleasure to work with IRPP Vice-President Peter Dobell over the past 18 months.

I thank Levent Hekimoglu for a proofreading job *par excellence*, and for preparing the index. His commitment to accuracy and thoroughness could not fail to make this volume better than it would otherwise have been. Thanks, also, to Suzanne Mercure and Käthe Roth for top-quality translation assistance; and to Susan Bartlett for first-class typing.

To IRPP President Rod Dobell and Social Programs Director Shirley Seward goes my deep appreciation for the confidence that they have shown through publication of this book; and to Ruby Day and Parker Staples, my sincere thanks for their patience, understanding, and efficiency in overseeing its production.

In terms of this project's conception, I am pleased to acknowledge a shared responsibility with David Gillies, a McGill Ph.D. student in political science, and with Dr. Amyn Sajoo, a graduate of McGill's Institute of Comparative Law. Mr. Gillies has, in fact, been a tower of strength, both intellectually and administratively, from beginning to end; simply put, it is very difficult for me to see how I could have completed this task without him.

Finally, if "indispensable" means anything, it means the cooperation and dedication to scholarship provided by the authors

whose papers make up this volume. "Indispensable" is also the word for my wife, Toba Brecher—infinitely patient and supportive partner throughout my career.

Irving Brecher Montreal, Quebec

Remerciements

Plus de deux années se sont écoulées depuis que j'ai commencé à planifier le symposium sur les droits humains et le livre qui devait en découler. Au fil du temps, je suis devenu redevable envers plusieurs individus et organisations.

Je voudrais d'abord exprimer ma gratitude au Centre d'études sur les régions en développement de l'université McGill ainsi qu'à la Fondation canadienne des droits humains (FCDH) pour leur encadrement et leur soutien indéfectible. Aussi, je veux remercier tout particulièrement l'Agence canadienne de développement international (ACDI), le Ministère des Affaires extérieures du Canada, le Secrétairiat d'État, le Centre de recherche en développement international (CDRI), la faculté des Arts ainsi que la faculté des Études avancées et de la recherche de l'université McGill; sans leur aide financière, il ne m'aurait pas été possible de mener à terme ce projet. Je veux aussi remercier McGill International et le Ministère des relations internationales du Québec pour leur encouragement et leur soutien.

En dernière analyse, bien sûr, ce sont les individus qui font la différence. Tous mes remerciements vont au Dr Samuel Freedman, vice-recteur de l'université McGill, pour sa participation au symposium, ainsi qu'au professeur John Humphrey de l'université McGill, à l'ex-directeur exécutif de la FCDH, M. Stanley Urman de même qu'à l'assistante-directrice, Mme Marnina Gonick, pour leur aide inestimable dans la planification et l'organisation du symposium. J'ai aussi beaucoup apprécié la contribution de ceux qui ont présidé à ses sessions: le recteur de l'université McGill, M. David Johnston, et les professeurs Julius Grey et Dale Thomson, aussi de McGill; le professeur Ivan Bernier de l'université Laval; M. Jean Fournier, ex-président du conseil de la FCDH; M. Allan McChesney, consultant sur les droits de la personne à Ottawa; M. Robert Miller du Centre parlementaire sur les affaires extérieures et le commerce extérieur, à Ottawa; le Dr Gerald Schmitz, de la bibliothèque du Parlement du Canada; ainsi qu'au professeur Richard Salisbury, décédé, doyen de la faculté des Arts de l'université McGill. Un mot de remerciement particulier doit aussi aller à deux panellistes du symposium: la professeure Gisèle Côté-Harper de l'université Laval et l'honorable Nic Leblanc, député à Ottawa.

Je suis reconnaissant envers M. Lewis Perinbam, vice-président de l'ACDI, ainsi que M. Robert Robertson, secrétaire parlementaire du CRDI. Ils m'ont conseillé, encouragé et aidé aux périodes cruciales de cette aventure.

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Je remercie M. Levent Hekimoglu pour l'excellence de son travail de correction d'épreuves et pour la préparation de l'index. Sa recherche de la précision et de la perfection ne peut qu'améliorer la qualité de ce livre. Mes remerciements, aussi, à Mesdames Suzanne Mercure et Käthe Roth pour leur excellent travail à la traduction, ainsi qu'à Mme Susan Bartlett pour son impeccable travail de dactylo.

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Il me fait plaisir de reconnaître, dans la conception même de ce projet, une responsabilité partagée avec M. David Gillies, étudiant au doctorat en sciences politiques à l'université McGill et avec le Dr Amyn Sajoo, diplômé de l'Institut de droit comparé de l'université McGill. En fait, M. Gillies a été un solide pilier de ce projet, à la fois au plan intellectuel et administratif, du début jusqu'à la fin; pour tout dire, je ne vois pas comment j'aurais pu compléter ce travail sans lui.

Enfin, si le mot "indispensable" a un quelconque sens, il signifie sans doute toute la coopération et la dévouement au savoir des auteurs dont les articles constituent le présent ouvrage. Indispensable est aussi le qualificatif qui s'adresse à mon épouse, Toba Brecher, partenaire d'un soutien et d'une patience infinis, tout au long de ma carrière.

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I.

Editor's Introduction

Irving Brecher

This volume has its origins in a symposium on "Human Rights, Development and Foreign Policy: Canadian Perspectives", held in Montreal on March 28-30, 1988. The Canadian Human Rights Foundation and the McGill University Centre for Developing-Area Studies co-sponsored the symposium in commemoration of the fortieth anniversary of the Universal Declaration of Human Rights.

The symposium had three basic objectives:

- to examine and assess the impact of human rights on the development and implementation of foreign policy
- to improve public understanding of the relationship between human rights and Third World development
- to consider new directions for Canada in the international protection of human rights.

More than 100 people attended, including a distinguished group of Canadians and international experts from the United States, Europe, Asia, Africa, and Latin America. Among the participants were Canadian and foreign government officials, parliamentarians, academics, and members of the NGO community.

This book contains most of the papers presented at the symposium—in the authors' language of choice, English or French. Many of those papers have undergone substantial revision since the time of original presentation. In addition, five papers were especially commissioned for inclusion in the book, along with an important interview. All 26 contributions have been carefully edited in an effort to maximize intellectual cohesion, consistency in style, and accuracy of documentation. A summary, or *résumé*, is provided for each of them—in French for the English ones, and in English for the French.

Given the subject matter, the number of papers, and the differing authors' perspectives, it should come as no surprise that the book spans a very wide range of discussion; nor that it reflects considerable overlapping and some duplication. By the same token, this should prove no less instructive than inevitable. There are, in any event, a number of unifying themes, notably: the role of the United Nations in the evolution of human rights standards; linkages among human rights, and between such rights on the one hand and Third World development on the other; human rights vs. other objectives in Canadian foreign policy; problems of, and prospects for, effectively integrating human rights into Canada's development assistance programs.

Most of the contributions could have been fitted reasonably well into these functional themes. This has, in fact, been done with over half of them. For the rest, three groupings have been made: one for papers looking at human rights "through Third World eyes"; a second for Canadian parliamentarians' views on human rights; and a third for "special contributions." The rationale for the Third World and parliamentarian groupings seems self-explanatory. The "special contributions" comprise other papers that cut across particular themes—for the most part, special symposium addresses delivered by distinguished speakers from Canada and abroad.

Perhaps the main point to be stressed here is that this volume is intended as more than a set of conference proceedings. Hopefully, it will be seen as a book of inter-connected "chapters" carrying a variety of messages that, in terms of analytical depth and potential impact, go well beyond the symposium with which the project began.

II.

Human Rights, the United Nations, and Third World Development

Linking Human Rights and Development: Aspects of the Norwegian Debate

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Asbjørn Eide

Résumé

Cet article commente les efforts récents de la Norvège pour associer les droits de la personne à l'aide au développement. Certains disent que cela représente une tentative *d'exporter* nos conceptions des droits à d'autres sociétés qui ont des cultures différentes et par conséquent des notions différentes des droits de la personne. L'auteur soutient que ces thèses passent à côté des vraies questions en jeu et qu'elles sont théoriquement fausses. Le souci de la *dignité* humaine a existé dans toutes les cultures et l'être humain a aussi été bafoué dans toutes les cultures. La promotion des droits de l'individu a été une lutte constante et ses protagonistes ont rencontré des opposants tant de l'intérieur de leur société que des sociétés autres.

Il est vrai que la notion de droits *de nature* prend sa source en Occident mais cela est dû en bonne partie à des causes historiques spécifiques. De toute façon, cela ne résoud pas la question contemporaine des droits de la personne puisque le concept moderne de droit de la personne est le produit de la Charte des Nations Unies et de la Déclaration universelle des droits de l'Homme adoptée par l'Assemblée générale en 1948, ainsi que des deux Pactes sur les droits adoptés à l'unanimité en 1966 alors que la majorité des membres de l'ONU provenait d'Asie et d'Afrique.

L'auteur souligne que la promotion et la protection internationale des droits de la personne est une responsabilité partagée. Il scrute l'implication de la Norvège en matière de protection inter-

nationale et voit l'association droits de la personne et développement comme la prolongation de ces efforts.

Il décrit la recherche de principes conducteurs en la matière, consignée en deux livres blancs: St.meld. no 29 (1984-85) et St.meld. no 34 (1986-87). Il fait aussi l'historique des positions adoptées par la Norvège quant au lien entre les droits de la personne et le développement. Enfin, il énonce un cadre conceptuel qui se réflète dans la Déclaration des Nations Unies sur le droit au développement. Adoptée avec l'appui des votes de tous les états du Tiers-Monde en 1986, la déclaration stipule (à son article 6, par. 3) que: "les états devraient voir à éliminer les obstacles au développement résultant de manquements aux droits civils et politiques, ainsi qu'aux droits économiques, sociaux et culturels."

Introducing Human Rights in Development Cooperation

Many of the relatively rich industrialized countries are now debating ways in which to introduce human rights concerns into their development assistance. The purpose of this paper is twofold: to reflect on some of the dilemmas which arise in doing so, and to review aspects of the *Norwegian* debate including the official guidelines which have been adopted in the field.

Among issues arising are these: (1) is it wrong, or can it be justified, to bring human rights into development cooperation, and (2) if the answer is that it is justified, how should it be done?

The claim that it is wrong, is made in two very different versions: (1) the claim that we, by doing so, impose our culture and values on others who have different values and therefore different conceptions of rights in their culture, and (2) the claim that the introduction of human rights is harmful to other concerns which should be given priority.

I shall deal first, and very briefly, with the claim that we impose our values on the recipient countries. It has been debated *ad nauseam*; I shall not review the discussion but limit myself to some brief postulates.

Underlying the claim is the argument that human rights originated in the West and that their application to non-Western societies is to impose Western culture on them. But the second part of the sentence does not follow from the first: it is a *non-sequitur*.

I will show through a brief historical comment (section 1) that traditional human rights did emerge in the West, but this did not mean that they quickly became part of Western culture. On the contrary, there was opposition which lasted for centuries, both political and ideological; part of the resistance was based on the fact that the notions of human rights ran counter to established cultures in the various Western nations of the time.

The second part of the statement, that since human rights emerged in the West their application now, in the final part of the twentieth century, is an imposition from the West, also fails on another ground: what we are presently talking of are the human rights recognized in the International Bill of Human Rights, which consist of the Universal Declaration of Human Rights and the two major covenants (adopted in 1966, see below), and these have been adopted with the concurring votes of governments in all parts of the world. Thus, the presently existing internationally recognized human rights are the shared heritage of the whole international community. Further substantiation of this view will be given in section 2. I postulate on this basis that the protection and promotion of human rights are a joint international responsibility; this position and the Norwegian contribution to it are briefly outlined in section 3.

The claim that the introduction of human rights is harmful to other concerns which should be given priority, can be subdivided into: (1) that it harms the interests of the developing countries, and (2) that it harms the interests of the donor countries. The first of these will be implicitly reviewed by examining the main lines in the Norwegian debate (section 4). The second aspect, that it may be harmful to donor countries, is a proposition which I shall not examine here since there are few who openly make the claim, though it may well be the most important cause of the reticence in practice in donor countries.

If it is found that the introduction of human rights concerns is justified, the next issue arising is the functional one: how should it best be done?

Two brief observations will be made here; the issue is examined later by reviewing the guidelines which have been adopted on this in Norway (section 5).

First, it should be done in a way which respects the basic elements of the sovereignty of the recipient country, with the qualifications flowing from modern principles of international law and relations as derived from the Charter of the United Nations.

Second, it should give priority to ensuring the protection and realization of the rights of the most vulnerable—not only in the economic and social sense, but also in the civil and political. If the rights of the most vulnerable were protected, then the rights of the stronger would certainly be safe.

Vulnerable in the political sense are those in detention or who have been the subject of enforced disappearance for political reasons, or who live in realistic fear of being killed, detained, kidnapped, or maltreated when they exercise their human rights through political activity, expressing their views openly, organizing and participating in trade union activities and similar activities.

Vulnerable in the social and economic sense are those economically deprived, without access to adequate land or other material resources, without access to work, to education, and to health services. Priority to the concerns of these most vulnerable groups is *not* given by improving the general economic and social situation in the country, but by insisting on the direct and immediate advancement of these particular groups, by ensuring that *they* have access to food, that exactly *these* persons have access to education and to work. Rhetorically, it is often argued that by assisting in economic development of a country the economic and social rights of the most vulnerable is protected. This is often not the case; it may well work the other way around.

Vulnerable as *groups* are those which cannot without fear use their own language, maintain their cultural traditions, and practice their religion.

The paper ends with some views on how we can best operationalize the concern (section 6).

1. Culture and Human Rights in History

The concern with human *dignity* has existed in all cultures, and the human being has been grossly violated in all cultures. Nazi extermination was set in the middle of what was seen as the flowerbeds of Western culture; genocidal actions against indigenous peoples in the Americas and in Australia were carried out by self-proclaimed freedom-lovers emigrating from Europe at a time when human rights jargon was blossoming there and was warmly endorsed by the emigres—in so far as their own emigre society was concerned, but not embracing the peoples they met.

While slavery is as old as mankind and was found in most societies of the past, its large-scale and massive use in capital accumulation was organized by Europeans and their descendant settlers in the Americas.

The promotion of the rights of the individual has been a struggle all along, and the protagonists have met their opponents as much inside their own society as in the societies of others.

Natural Rights in Western History

The notion of *natural* rights[1] originated in the West. To this, there is in part a technical explanation: The concept of natural rights emerged in a particular phase of European history. It came at the time of the break with feudalism and with imperial ambitions as sustained by the Catholic Church, and it was part and parcel of the emergence of European nation-state. Individual freedom was essential for the functioning of the new patterns of ownership and production (economic liberalism); simultaneously, the nation-state required a new political structure since the aristocracy and monarchy based on feudalism were on their way out.[2] During the decline of feudalism, there emerged a competition between two basic conceptions of the state—the absolutist monarchy (*l'état, c'ést moi*) as supported by Hobbes,[3] and popular sovereignty (the state is all of us) as supported by Locke.[4] This was at the core of political struggle in the eighteenth and nineteenth centuries. The notion of natural rights as a trump wielded by the individual *in his or her relation to the state* (freedom, protection, and gradually also the right to social and economic rights) required the existence of a state which "belonged" to that nation, an entity which the people living there could consider their own.[5]

Here enters the technical difference, which is also a difference in power relations. At the time when natural rights thinking emerged in Europe and among European settlers abroad, most of the rest of the world was brought under European domination and colonialism. People living in other continents were precluded by European power from organizing their own independent states where the same notions of rights could emerge or be sustained.[6] At best, the non-white people living in colonies or otherwise under European domination could hope for paternalistic benevolence, for grace;[7] they could not hope for the recognition of rights.[8]

There is also a second sense in which the modern concept of human rights can trace a European genealogy. From the time of the Renaissance, beginning with the evolution of the Italian city-states, there was in Europe an increasing concern with the *individual* as an entity distinct from the collectivity. This influenced, to a very high degree, political evolution in Europe and in the settler societies of North America. Protestantism, the search for freedom of religion, and rationalism were all phenomena deeply influenced by this preoccupation with the individual. The change in thinking on natural law which took place in the eighteenth century can only be understood in this light.[9] The now-classic formulation of the new way of thinking is found in the famous words of the American Declaration of Independence (1776):

> We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness—That to secure these

> Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . . .

But political evolution did not stop there, nor was it confined to its own cradle in the West. Students and others from the colonies learned from and absorbed many of the ideas, bringing them home partly as verbal ammunition in the struggle for self-determination in the same way as they had been used by the American colonies, but partly also to challenge some traditional cultural attitudes in their own societies.

Opposition to Natural Rights Ideology

They faced opposition, as had the natural rights proponents in Europe.

In the West, there were in the nineteenth century two different, though related, strands of intellectual opposition. One was the so-called "historical school," represented in Britain by such authors as Edmund Burke and in Germany by Friedrich von Savigny. The basic element in their opposition is very similar to some voices heard today in the Third World. They claimed that there did not exist universally valid human rights, but only rights specific to any given culture and determined by its particular evolution. Tradition, rather than universal rights, was and should be the foundation of legal and political order. Edmund Burke was strongly critical of what he considered dogmatic pursuit of human equality, which in his opinion had caused untold misery in the French Revolution;[10] experience and gradual evolution of the political system were to be preferred over the pursuit of such ideas.

He argued that the natural rights ideologists do not give credit to tradition and experience. The doctrinaire espousal of equality and of the right to rebel had given rise to violence and chaos, he claimed. In his view, historical evolution rather than immutable rights should be preferred.

In Germany, the reaction against the philosophy of natural rights emerged with the so-called "historical school" of jurisprudence. Friedrich von Savigny, in his *Vom Beruf unserer Zeit fur Gesetzgebung und Rechtswissenschaft* (1814), argued that the *law lives in the consciousness of the people, it is a creation of the people's spirit (the "Volksgeist")*. He refers to that particular people, not to human beings in general. The proposals to codify the laws of a country on the basis of natural law, which the natural rights proponents wanted, he considered to be a "grandiloquent, completely hollow idea."

The severest criticism, however, came from Marx and Engels. In *The Communist Manifesto*, history is described as a continuous struggle between the dominant and the emerging class, each time ending with a victory of the latter and a formation of new social structures. There were no "rights" except those which corresponded to the economic system at any given time, and the rights which existed were only those which were in the interest of the dominant class.

It was alleged that the working class could not expect much justice from the state, which was described as a committee regulating the interests of the bourgeois class. The ideal of humanity was recognized to have served to limit the harshness of measures used to maintain control over the working class, but the alleged natural rights and freedoms had no real content for the working class.

In spite of these criticisms, natural law, constitutionalism, and the search for justice continued. It suffered severe setbacks, however, from Nazism and Stalinism at the political level, as well as from racism and anti-semitism at the social and cultural levels. It took until 1945 to make a major and new move forward.

2. Human Rights in Contemporary International Law

The modern concept of human rights is a product of the Charter of the United Nations and the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. When the concept of human rights is used in this paper, it refers to those rights which have been authoritatively proclaimed by the United Nations and by the international regional organizations as human rights. It is therefore not synonymous with the traditional concept of natural rights, though of course modern human rights have been influenced by that tradition.

The proclamation of 1948 not only lifted human rights from the national to the international level, but it was the first time that these rights could legitimately be expressed as universal human rights since the proclaiming body was the closest the world had come to an assembly of the peoples of the world. The proclamation came at a time when the circle of states in the international society had significantly expanded.[11] Participating in the drafting were many states from the Third World. Latin American states played a highly effective role in drafting the Universal Declaration of Human Rights, but also states like Egypt, Lebanon, India, and the Philippines were active and played progressive roles in the formulation of the international concept of human rights.[12]

It was in 1966 that the main part of the edifice was created, by the adoption of the two major international covenants on human rights by the General Assembly of the United Nations. The International Bill of Human Rights had been completed. At that time, Third World states formed a large majority of the United Nations; the West was in a minority position.

Third World states embraced the human rights language, since it gave modern expression to concerns which had been existing for long but under other terms. Only when they became independent could the human rights language become fully relevant to their own situation. They therefore endorsed rather than challenged the concept.

There is, consequently, no question of "exporting" human rights. But there is a task to perform in contributing to the joint promotion and realization of something which by now is the common heritage of mankind: a heritage left to us by brave individuals and groups, of all colours and cultures, struggling in their respective ways for the dignity of the human being against the forces of oppression and exploitation.

3. International Protection and Promotion of Human Rights: The Shared Responsibility and the Norwegian Contribution

The *promotion* of this common heritage of ideals, and its transformation into social and political reality, is a joint endeavour for which every state, including Norway, has a joint responsibility.

In 1948, the Universal Declaration of Human Rights—adopted with the concurrent vote of all Third World countries then members with the exception of Saudi Arabia—was proclaimed by the General Assembly as "a common standard of achievement for all peoples and all nations,"[13] and all organs of all societies were urged "by progressive measures, national and international"[14] to secure the universal and effective recognition and observance of the rights contained in it.

In article 2 of the Covenant on Economic, Social, and Cultural Rights, all states parties to the covenant have undertaken "to take steps individually and through international co-operation and assistance" to achieve progressively the rights contained in the covenant.

There is today in international law an obligation to cooperate,[15] and this also applies in the promotion and protection of human rights.[16] The obligation, I submit, is double and reciprocal:[17] firstly, every state should bring its own system into conformity with international human rights requirements; secondly, every state should contribute its share to the international promotion of human rights world-wide. Norway has not only the obligation to participate in international monitoring and fact-finding—a responsibility which also Tanzania, Mozambique, Sri Lanka, and others have, as members of the United Nations—but since Norway and all other countries also have the obligation to implement international human rights norms in their own domestic system, Tanzania, Mozambique, and Sri Lanka are similarly entitled to participate in international monitoring of Norwegian performance in this regard.

Norwegian Involvement in International Protection

Norwegian concern with international protection of human rights had gone through several decades of history. It did not start with the reaction to violations in developing countries.

The first step by Norway was to prove its own commitment and good will, by adapting its legal system to international human rights, and by accepting international supervision and control.

Norway has had to make changes in its legislation, even in its constitution, to comply with international human rights norms. Norway has also subordinated its human rights performance to control by all existing international agencies of supervision, and further accepted that Norwegian individuals and others living there can take their complaints against Norway to the Council of Europe and to the Human Rights Committee of the United Nations.

It can therefore not be argued that Norway had resisted external supervision of Norwegian human rights performance.

In its contribution to international protection, the initial circle of states where Norway expressed its concern, was the European. Membership in the Council of Europe was mainly to help prevent a recurrence of fascism in Europe and to remove the ground for the emergence of totalitarian regimes. In the context of the North Atlantic Treaty Organization, Norway also opposed European colonialism, including in particular Portuguese colonial warfare. Norway has also repeatedly expressed opposition to Western support for the *apartheid* regime and has gone further than most in imposing sanctions against the white minority regime in South Africa.

In 1969, Norway together with other Nordic countries and the Netherlands, took the lead to confront in the Council of Europe the extensive human rights violations by the military *junta* in Greece which had come to power in 1967. This was an unprecedented action at the time—the first occasion where a state brought a complaint against another without having a special reason for it such as ethnic links to the groups which were oppressed. The platform for action was a value-based protection of human rights wherever it might occur, rather than an interest-based action for the human rights of groups closely linked to the complaining state.

Similar action has since been taken against Turkey, though with somewhat less perseverance.

Efforts to link a concern with human rights to development assistance need therefore be no more than an amplification of a policy otherwise already well established. The point of departure is the obligations held by all states under present international law to cooperate in the promotion and protection of human rights; such duties become more pronounced between states which already cooperate closely in other fields.

Ideally, such cooperation should be channeled through the international human rights agencies which have been established for the purpose of controlling and supervising national performance of human rights. Ultimately, this will undoubtedly be the case; it depends, however, on whether the countries concerned are ready to submit to effective international supervision. Until they do, bilateral actions in the protection of human rights should be taken where it is possible.

Exploring the Principles of International Protection of Human Rights

In 1977 the Ministry of Foreign Affairs, in a white paper to the parliament, sought for the first time to clarify some of the principles which should guide Norwegian contributions to international protection of human rights.[18] There was still an uneasy awareness of the scope and dimensions of international human rights:

> The human rights concept—the idea that everyone shall enjoy certain inalienable rights which set definite limits to the state's powers to encroach on the rights of the individual and assure the individual the right to participate fully in the decision making process and in the life of the community in general—has been a central feature in the development of the democratic state, subject to the rule of law, as we know it in Norway and other countries of the West . . . .

In this quotation, there lingers on a confusion about the older notions of natural rights and the modern notion of international human rights. But it was recognized that this was not the whole story:

> The human rights concept is not static. The conception of the substance and scope of the term human rights has been, and continues to be, subject to change in pace with the evolution of society. Originally attention was mainly focused on civil and political rights . . . . However, developments have steadily progressed towards an enlargement of the human rights concept, in which economic, social and cultural rights are also included. This applies to such fundamental rights as freedom from starvation and

> destitution and the right to work, social security and cultural self-expression.
>
> There is a close link between civil and political rights on one hand and economic and social rights on the other. . . .

The white paper made a separation in regard to ways in which to promote the two sets of rights, however:

> This report will deal with all aspects of human rights in accordance with the enlarged human rights concept. When it comes to a question of what Norway can do, the emphasis will be laid on its civil and political rights aspects. Norway's contribution towards strengthening the economic, social and cultural aspects of human rights is principally channeled through the Norwegian policy on development assistance towards the developing countries and Norway's general efforts to help promote a new international economic order . . . .

In this formulation there is an opening for a future elaboration. By 1977, there had not emerged a meaningful analysis of the distinction between "economic development" and "the realization of economic and social human rights." We must admit that the distinction has not even today been fully clarified, even though important steps have been taken in this direction. Economic and social rights imposes specific obligations on governments in relation not to an aggregate—the national population—but in relation to each and every individual in society, and above all towards those most deprived.

4. Linking Development and Human Rights: The Norwegian Debate

In the early 1980s, the debate on human rights in the context of development assistance surfaced in Norway. It was strongly influenced by the events in Sri Lanka, one of the main recipients of Norwegian development assistance. That country had performed admirably well in the past, as a democratic society respecting the rule of law, but in 1983 it abruptly became engrossed in massive violations of human rights. The Norwegian debate was also influenced by policies in other parts of the West, including resolutions by the Parliamentary Assembly of the Council of Europe, asking that human rights be given greater attention in development assistance.

Initially, there was considerable opposition to linking human rights and development assistance. This opposition was strongest within the Norwegian Agency for Development Assistance (NORAD), subsequently to become the Royal Ministry for Development Assistance. There was some support for the link within the administration, which was split on the issue. At the political level, and particularly in parliament, there has for a long time been support for a linkage.

Arguments used against a link have included the following:[19]

Respect for Sovereignty

Internationally, as well as in Norway, it has often been argued that international concern with the human rights performance of a given state constitutes intervention in domestic affairs.

This argument has been rejected by a majority of the members of the United Nations. Through a gradual process, the Commission on Human Rights of the UN has increasingly asserted international jurisdiction, though in a mild way, when faced with gross and systematic violations. Additionally, a majority of the members of the United Nations have ratified the covenants on human rights and have thereby undertaken obligations to report to international agencies on their human rights performance, and to be questioned on this.

In bilateral relations, the principle of sovereignty has a somewhat higher standing, as a necessary defence against efforts by stronger powers to manipulate domestic politics. However, the concept of sovereignty is different today from what it was in previous generations. As a result of the Charter of the United Nations, and internationally recognized human rights, it is now accepted that sovereignty resides with the people, not with the government as such—i.e., not with those who happen, at any given time, to exercise governmental authority unless that authority is based on the consent of the governed. The principle of popular sovereignty is a core component in the international legal order of today. The people shall through freely chosen representatives in a functioning democracy have the possibility of governing themselves. Wherever this does not function, because repressive governments prevent democratic evolution, sovereignty is not fully realized.

International support for democracy and for the efforts by different groups to participate in a democratic society, is therefore a contribution to the promotion of sovereignty, not a weakening of it.

This depends on the means used. The outside world cannot resort to the use of force to change the domestic system,[20] except in extreme situations;[21] non-coercive intercession carried out not in the interest of the outside state but in the interest of the people concerned, and strictly limited to measures enhancing human rights, are permissible and form part of present-day international solidarity and cooperation.

The "Punishment" Argument

Some argue that to link human rights with development assistance is to neglect the violations of the strong and to punish primarily those countries which are the weakest in the international society. This is seen as being fundamentally unjust.

The argument fails on several accounts. First, as has been shown above, efforts by Norway and others to protect human rights internationally have *not* been limited to developing countries. On the contrary, primary concern has been with European countries. Second, human rights protection can hardly be seen as a punishment. When governments are criticized for inadequate protection of human rights, this is intended to help rather than punish the people living there.

The purpose of focusing on human rights is to assist those parts of the population who are subjected to violations, or who are neglected in the development process and therefore deprived of their economic and social rights.

The "Need to Understand" Argument

Some argue that the developing countries have substantial demographic, social, and economic difficulties, making it difficult to secure human rights. They have to be understood and assisted, not criticized.

Undoubtedly, many of them have problems, and a deeper understanding of the causes of these problems is required. But to understand is not to excuse. It depends on how these problems are being addressed. Torture, summary or arbitrary executions, or extensive use of capital punishment cannot be excused; nor will such excesses help to reduce the demographic, social, or economic difficulties of that country. On the contrary, they will lead to further deterioration.

Admittedly, the forms of political participation and the structure of democracy must to some extent be adapted to local conditions. It cannot be required that they shall adapt to foreign patterns. Even less acceptable, however, is that a tiny and authoritarian elite inside the country shall be entitled to impose upon its people a political system which is not democratically drafted and chosen. This applies whether we are talking of a system imposed after a military coup, as in Chile, or for that matter a system imposed by a liberation movement after its victory, if it is done without further and genuine consultation with the people.

"The State Administration Should be Strengthened, Rather than Weakened"

It is argued that the state apparatus is too weak in many developing countries, and that it should be strengthened rather than criticized. On the face of it, this argument seems reasonable, but on closer inspection it consists of two elements which are not logically coherent.

It is true that the state administration is weak in many Third World countries. There are, however, many different reasons for that weakness. The defectiveness of a state is not only a question of lack of professional competence or resources, though these factors may indeed be weighing heavily. The weakness may also be due in part to corruption, clientelism, and to neglect in regard to the weaker groups in society. If these factors are not taken into account, to insist on strengthening the state apparatus can be dangerous. It can become an encouragement of authoritarian, non-democratic, and self-serving regimes, which do not contribute to the promotion of development or human rights. Society as a whole, in which obviously state administration is important but not the only part, needs to be strengthened. Violations of human rights, ethnic discrimination, clientelism, and favouritism are indications that society, and thereby in the long run also the state, is undermined and weakened. External material assistance to the government may well accelerate rather than prevent such processes.

When all members of society are encouraged to actively support, and in turn to also benefit from, the state administration by free and genuine participation, then society is strengthened. A narrow focus on the state apparatus, without examining the underlying consensus, can be seriously counterproductive.

"A Strong State is Necessary to Solve the Poverty Problem"

This is a sub-variety of the preceding argument, and can be subjected to the same criticism. Undoubtedly, an efficient state administration run by motivated politicians and administrators might contribute significantly to the solution of some types of poverty problems. Whether this happens depends on a number of factors. Above all, are the politicians and the administrators responsive to the needs of the poor in society, in the sense that they in reality give high priority to measures which can ensure the satisfaction of these needs? That can in no way be taken for granted. Their power base and their reference group may well be the more privileged in society. Politicians often use the rhetoric of poverty alleviation, without actually pursuing it. In many cases populism exploits the language of poverty alleviation for political purposes without genuine efforts to implement the policy.

Such measures might lead to opposition and counter-action by influential, privileged groups. External support is sometimes used by recipients to cling to power rather than to act for poverty alleviation. To face the poverty problem, assistance must be geared specifically to the realization of the economic and social rights of the underprivileged. This may not be a high-ranking priority for the recipient. It calls for serious dialogue and thorough negotiation with the recipient government, with human rights considerations paramount in the platform for cooperation.

Secondly, there are different poverty problems in a given country, not all of which are being attended to by the government. Certain groups, such as the tribal people in Chittagong Hill Tracts of Bangladesh, are impoverished because state authorities seem to use the military to push them away from their traditional land areas, in order to give space to the settlers coming from the plains. This is one of many examples showing that what is done to reduce poverty for some, impoverishes others. To assume that the state is the only, or the main, vehicle for reducing poverty, without an analysis of the conflicts in the society concerned, is clearly unacceptable.

South Africa as the Main Problem in Africa

Another argument, applied in particular to the developing countries in Africa, is that attention should only be given to the violations in South Africa until *apartheid* is eliminated.

Most Norwegians, including myself, consider *apartheid* the worst and most systematic violation of human rights in Africa, if not in the world. Sanctions against the white minority regime are necessary in order to bring these violations to an end. But these violations, serious as they are, cannot and should not be used as excuses for violations in independent African countries. For those affected—be they opposition students in Mozambique or Kenya, nomadic groups in Kenya, the San-people in Botswana, or various ethnic groups in Ethiopia—who are all subjected to marginalization and extensive violations, the arguments that focus should be solely on South Africa is of no avail.

Admittedly, South Africa is pursuing an active policy of destabilization against the frontline states. The *apartheid* regime foments and supports terrorist organizations committing extensive atrocities, particularly in Mozambique. African governments are faced with great difficulties due to this policy. But this cannot be an excuse for neglect or violation of human rights which, according to international law, are inviolable under all circumstances.

5. Current Guidelines: Recent White Paper Clarifications

In 1984 a major white paper (St. meld., no. 36, 1984-1985) for the first time sought to suggest certain guidelines in this field. The document was not discussed in parliament before the change from the coalition government (Conservative and Centre) to the Labour government in May 1986. The new government has prepared a supplementary white paper (St. meld., no. 34, 1986-1987), which, in Chapter 16 on "Development and Human Rights," endorses the same principles as those contained in the document presented by the coalition government. It can therefore be safely concluded that the principles outlined below have firm support across the whole political spectrum in Norway.

The intention is not to make a dramatic break with past practices or to use human rights as the main yardstick in the choice of recipient countries or in the continuation of aid: "The experience of other donor countries shows that it is more important to concentrate on specific issues to protect human rights rather than punitive action against violators. Assistance must not be seen as a tool for 'rewarding' some governments and 'punishing' others" (St. meld., no. 36, 1984-1985, p. 118).

Implicit in this formulation is a preference for *positive* linking of human rights and development assistance. This could consist, for instance, of assistance to local organizations:

> Important local human rights work is undertaken in a number of developing countries by lawyers' groups, churches, trade unions, and impartial humanitarian organizations. Norwegian humanitarian assistance should support groups which on an impartial basis offer legal relief or material or moral assistance to the persecuted and their families.

Not only human rights organizations, but also local self-help organizations among the underprivileged could be assisted, including those of the indigenous populations:[22]

> Of importance is not only the direct human rights work. Local organizations working for the organization of the rural population and other underprivileged groups in connection with their own development projects and those of the government, contribute indirectly to a strengthening of human rights by increasing the capacity of people to make use of their rights and to formulate and promote claims on the local and central authorities in the respective countries [St. meld., no. 34, 1986-1987, p. 83].

In order for donor contributions to make an effective contribution to the human rights situation in the developing countries, expertise is required:

> A precondition for being able to positively influence the human rights situation in a given country, is a thorough knowledge and understanding of the political and social conditions in the country. To ensure that the Storting [parliament], the administration and organizations have the best possible basis on which to assess human rights initiatives within the aid context, research, documentation and information activities will receive increased funding [St. meld., no. 34, 1986-1987, p. 119].
>
> The newly established Norwegian Institute for Human Rights will be active in research, background documentation and information. This institute will be relevant to undertake projects [for the Ministry] related to research and documentation on human rights in the developing countries [St. meld., no. 34, 1986-1987, p. 83].

Not only research and documentation in donor countries is relevant: "moreover, local initiatives aiming at increased respect for internationally recognized human rights by means of information, education and research should receive Norwegian humanitarian assistance" (ibid.). For these positive efforts to work, it is necessary to have good contacts with the recipient countries: "through a running dialogue, it will in many cases be possible to obtain greater results than through sanctions" (St. meld., no. 34, 1986-1987, p. 82). However, situations might become so grave as to justify drastic action:

> . . . a modification, reduction or cessation of Norwegian assistance may . . . take place when the government of a particular country takes part in, tolerates or directly executes violations of human rights; when these violations are persistent and systematic and government efforts to end the abuse and bring the violators to justice are absent; and when the violations are gross and extensive [St. meld., no. 36, 1984-1985, p. 118].

An analysis of these concepts has been made in *Human Rights in Developing Countries (1986)*:[23]

> The following operational questions are important for the choice of policy:

> 1. Is the government co-responsible for the violations? An indication of whether the government "takes part in, tolerates, or directly executes" violations of civil and political rights is the degree to which specific instances of abuse have been investigated and those responsible brought to trial. All governments are responsible for providing justice and protection for every political, cultural and ethnic group within the borders of the state. The donor should, however, be sensitive to the fact that some law-enforcement deficiencies such as prolonged pre-trial detention may result from a lack of administrative resources rather than an absence of political will.
>
> 2. Are the violations persistent and systematic? It is important to distinguish between isolated and sporadic instances of violence on the one hand, and persistent patterns of systematic and targeted repression of specific political, cultural or ethnic groups on the other. In the first case the normal response will be for the donor to inquire about the incidence, thus demonstrating its concern over the matter; in the second case a more substantive response will be required.
>
> 3. Are the violations gross and extensive? It is not acceptable to rank human rights in "essential" and "less important" rights. But when operationalizing particularly *gross* violations it is especially relevant to consider the so-called "fundamental freedoms" and "integrity rights." These include freedom from torture and cruel, inhuman and degrading treatment or punishment; freedom from extra-judicial executions and "disappearances" and from capital punishment on political grounds . . . .[24]

6. Conclusions and Suggestions for Operationalization

To link human rights and development assistance is justified, because these rights in their contemporary version constitute a common heritage to which all states have contributed by the drafting and adoption of the international instruments which define human rights today.

What is more questionable is our attitude to the transfer of *development*. There is, I submit, a genuine danger of exporting our Norwegian models, derived from our own evolution and our particular culture. Many "development experts" are involved in the export of our particular and culture-bound models of development.

There is *no* common heritage concerning the guiding values for development. There is no place for an authoritative definition of the term itself, not even when used in contexts like "development decades," "developing countries," or "development assistance." There have been deliberate efforts to transfer Western concepts of development, e.g., as illustrated by the famous book by Walter Rostow, *The Stages of Growth*. Development was then understood to be more or less synonymous with "economic growth." Today, few would defend this narrow conception of "development."

What many observers seem to neglect is that since December 4, 1986, there is a near-consensual basis on which we could build. The UN General Assembly then proclaimed the Declaration on the Right to Development. Since all Third World countries enthusiastically voted in favour, and the only opposition came from a small group of Western states,[25] it cannot reasonably be argued that the declaration is a Western product. In its article 1, we find language which may help define development: "The right to development is an inalienable human right by virtue of which every human being and all peoples are entitled to participate in, contribute to, and enjoy economic, social and cultural development, in which all human rights and fundamental freedoms can be fully realized."

The word "development" in this formulation is an empty word when taken in isolation. Its meaning emerges from the final part of the sentence: "in which all human rights and fundamental freedoms can be fully realized."

Development might therefore be understood to mean the realization of human rights, in all their aspects. This would include economic growth, in so far as required for a realization of economic, social, and cultural rights, but development would be much wider than growth, and not all forms of growth would be compatible with development. The distinguishing criteria would be whether the processes of growth were such that they did not negatively affect civil and political rights, and that they gave better protection of social and economic rights to the most vulnerable and impoverished.

Read in this light, article 6 paragraph 3 of the declaration is almost tautological, and yet significant as a pointer: "States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights."

The message represents an almost complete reversal in thinking compared with the philosophy which prevailed in the 1960s and 1970s. Human rights violations are now considered to be an obstacle to development. This gives a solid base of legitimacy for those who insist in linking development assistance with respect for human rights. Aid can otherwise simply not have the intended effect.

There should no longer be a question *whether* Norway and other donor countries should make a link between human rights and development assistance, but *how* they should do it. The promotion of development means to contribute systematically and deliberately to the realization of human rights in all their aspects.

How can Norway best contribute to the advancement of universal human rights, the formulation and acceptance of which has been a joint endeavour of all nations of the world? It is not a question of transferring the Norwegian model, but for Norway to accept and to promote the international norms, here and elsewhere.

As pointed out in the introduction, it is not meaningful to associate the inclusion of human rights performance only with the giving or withdrawal of aid. There would be several weaknesses to this approach.

It would be built on the assumption that assistance is and should be directed to a government rather than to a nation (people), and that when governments are bad, the people should also suffer. In refusing to break with the recipient countries in order to avoid that the people suffer for bad governments, we should draw the consequence, however: the purpose of aid should be to assist peoples, not governments as such. When governments are responsive to all sectors of their own society, they may be the best agent through which to transmit assistance; when they are not responsive in an adequate way, ways should be sought to find a more diversified channeling to the different parts of the populations concerned.

Breaking aid would also eliminate the possibility of influencing in a gradual way the improvement of human rights, through a more sophisticated orchestration of the way in which development aid is given.

Furthermore, the breaking of aid relations would eliminate the possibility of involving the government of the recipient countries in a responsible process of finding and strengthening ways in which to improve human rights performance.

Dialogue and Encouragement

Dialogue should be understood as a comprehensive reciprocal communication between the people of the aid-giving country and that of the aid-receiving one. This dialogue should be closely connected with the aid given, exploring its purpose and effect for the realization of human rights.

The "people" are, both in the aid-giving and the aid-receiving countries, composed of many groups, interests, institutions, and organizations. The participants in the dialogue should include not only agents of the donor and recipient governments, but also organizations (trade unions, human rights organizations, humanitarian organizations, media)—on both sides. The intention should be to broaden the network of contacts, making it more pluralistic, less centralized, and less directive.

There could be transfer of resources in both directions as part of the dialogue. Organizations in Norway might help with material resources to corresponding organizations in developing countries, and the latter might provide ideas and insights to be used in organizations, media, and educational institutions on the Norwegian side.

Some governments of recipient countries would be reluctant to allow such interaction because they could not control it. They should learn, however, that there is no need for them to control everything that is going on—just as governments in the Western world are not able, and not even trying, to control all kinds of international interaction in which their citizens are involved. Creativity, patriotism, compassion, and solidarity may well exist outside the government network.

The dialogue should focus on human rights performance, to identify the weaknesses and the obstacles, and to help find ways in which the obstacles to human rights could be overcome. This is the major task ahead.

The elements might include:

- assistance in helping to build an independent and non-corrupt judiciary
- helping the establishment and functioning of legal aid services
- assisting in the promotion of independent bar associations
- assisting in introducing human rights education into training institutions for the police, for prison guards, and for the military and security forces

Undisciplined security forces sometimes cause havoc, destroying achievements obtained through years of patient economic construction supported by traditional development assistance.

Bilateral and Multilateral Assistance

Ideally, human rights assistance should be pursued through international networks, be it intergovernmental or non-governmental. It would be helpful in reducing cultural dominance. There should, however, be a realistic assessment both of the stage reached in the development of these networks and of the dominant influences inside them. Some are still too weak; others are influenced by interest groups which do not have human rights or humane development as their main concern. Bilateral relations are therefore an essential element for many years to come.

We have seen that Norwegian human rights evolution, which has gone through many stages during the past 175 years, has been greatly influenced by absorbing ideas generated in other societies. Free flow of ideas is essential; the freedom to act on ideas is equally important. Encouragement of organizations and groups which absorb the human rights concern, and make it their own platform, is therefore a crucial component in the strategy.

The dialogue requires participation. The specific linking of human rights with development, as distinct from the abstract ideas, must be given substance by involving human rights activists, scholars, and policy makers from the Third World in the development of the strategies required. We cannot now expect to have all the answers; in breaking with certain fixations of the past, we cannot expect immediately to see the best way for the future.

Notes

1. A distinction will be made here between the earlier theory of natural rights, which became the core of natural law thinking during the eighteenth century, and the modern concept of human rights, which has a more positivistic basis and has its foundation, above all, in the Universal Declaration of Human Rights and in other international instruments of the period after World War II. Failure to make this distinction is the cause of considerable semantic controversies, as evidenced, for example, in Maurice Cranston's book *What Are Human Rights?* (London: Bodley Head, 1973).

2. I am here telescoping at least 150 years of European history. There was no quick success throughout Europe for the new, liberal state and for constitutionalism. The major failure of 1848-1849 in Germany (the Frankfurt Assembly) had long-lasting and negative reverberations through much of Central Europe until the arrival of the Weimar Republic, and that in turn was only to last for a few years until fascism engulfed large parts of Europe.

3. In his *Leviathan*, Hobbes envisaged economic freedom in the sense of *laissez-faire*, thus meeting the concern of economic liberalism, as long as the sovereign was unquestioningly obeyed. He enumerated a number of "Diseases of Commonwealth," and one of the most serious was political criticism, the "poyson of seditious doctrines, whereof one is, *That every man is Judge of Good and Evil.*" The concern of Hobbes was to avert civil wars. The main function of the sovereign was to protect against civil disorder and foreign intervention; for the sovereign to be

successful, the individuals should submit without criticism to the power of the sovereign. Here quoted from Christian Bay, *The Structure of Freedom* (Stanford, Calif.: Stanford University Press, 1958), p. 28.

4. Locke's *Second Treatise of Government*, printed in *Two Treaties of Government*, was built on the theory of social contract, but his major point was that the social contract was a remedy to the inconveniences of the liberty enjoyed in the state of nature (i.e., before the social contract is made). There were three such inconveniences: the lack of a written and generally accepted law, the lack of a generally recognized and impartial judge to apply the law, and the absence of authorized police to enforce it. "The social contract is the remedy, and it has no *raison d'étre* beyond being a remedy for these specific wants. It cannot legitimately take away anything from individuals beyond what is required for this purpose" (from Bay, *The Structure of Freedom*, p. 30). Inherent in this is the right to rebel if more is taken away and the sovereign oppresses the individuals. This right to rebel was an important element in natural law thinking in the following decades.

5. The American colonies were among the first to link self-determination and natural rights, in their Declaration of Independence (1776).

6. The non-white peoples they met, were treated as "barbarian" and "heathen," as well as "primitive." There was a long debate in Spanish theological and philosophical discourse on whether the Indians had a soul. This was also the period in which the theories of racism were gaining ground in Europe. From the simplest efforts at classification of human groups by Kant, Linneaus, and Buffon, to full-fledged racist ideologies like that of Gobineau (mid-1850s), these were obstacles to the evolution of universal human rights, as distinct from the Western "natural rights" which for a long time was limited to the male Caucasian.

7. For the American Indians, particularly in the South, and often for the Africans and the Aborigines of Australia, even this grace was predicated on their willingness to convert to Christianity.

8. In the United States, there emerged in the 1850s a debate on whether the words in the American Declaration of Independence, quoted below in the text (that all men are created equal) also applied to the Black. In the notorious Dred Scott case, Chief Justice Taney had admitted that the language of the declaration was broad enough to include Negroes, but since the fathers of the

declaration had not placed them (in 1776) on an equal level with men, this showed that it was not their intention to consider them equal. In his speech at Springfield, the then-presidential candidate of the Republican Party, Abraham Lincoln, attacked this reasoning which was also espoused by his rival Justice Douglas. According to him, the authors of the declaration had said and meant that all men were created equal in certain inalienable rights, among which are life, liberty, and the pursuit of happiness. "They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately on them. In fact, they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit" (*The Collected Works of Abraham Lincoln*, ed. by Roy Basler, New Brunswick, N.J.: Rutgers University Press, 1953)). As president some years later, Lincoln did indeed go about enforcing it. His formulation is helpful in explaining the difference between human rights and social and political reality: a human right is valid even before it is enforced—or even enforceable.

9. The earlier notion of natural law had concentrated on the eternal and immutable validity of law, but had not associated it with individual rights. From the middle of the eighteenth century, there was a change from a theory of natural *law* to natural *rights*.

10. See, in particular, his "Reflections on the Revolution in France," *Works*, II.

11. In his brilliant study, Bert F. Röling has shown how international law first was a relationship between European states, then expanded to the so-called "civilized states" and only by 1945 to—in principle—all states of the world. *International Law in an Expanded World* (Djambatan and Amsterdam, 1960).

12. There are two widespread myths concerning the drafting of the declaration: first, that it was done largely at the insistence of Western European states and those of North America; second, that these Western states were concerned mainly with civil and political rights, whereas social and economic rights were pushed by the socialist states. Both myths are wrong or grossly oversimplified. For details, see Asbjørn Eide, *Making Human Rights Universal* (forthcoming).

13. From the preamble of the declaration.

14. See preceding note.

15. UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the United Nations Charter,UN resolution 2626 (XXV), 1970.

16. The declaration mentioned in the preceding note states: "States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and religious intolerance."

17. There are some controversies on the extent of this obligation. The scope of the obligation to cooperate in the protection of human rights is continuously expanding, however.

18. St. meld., no. 93, 1976-1977. St. meld. is a white paper to the *Storting* (parliament) in which the government explores the major aspects of a given issue and indicates the policies the government intends to pursue. On the basis of the white paper, parliament expresses its views on that issue and the policies indicated; these views will, in a parliamentary system like that of Norway, be given great importance by the government.

19. The arguments are rarely expressed in writing. What follows are some which have been made orally. Sources can therefore not be given; nor are the arguments necessarily held today by some of those who presented them at earlier stages..

20. The prohibition of the use of force in international relations would come in here. The principle of non-intervention would also be applicable. This has been well illustrated in the decision by the International Court of Justice in 1986 in the case between Nicaragua and the United States.

21. The much-debated right to humanitarian intervention has a low standing in modern international law. However, there may be some circumstances amounting to genocide where intervention would be found acceptable under international law. The Indian action in Bangladesh in 1971 and the Tanzanian action in Uganda in 1979 might be seen to fall in this category, though they are contested. Support for the liberation movements in Southern Africa is another matter, since this has been explicitly endorsed by the General Assembly of the United Nations.

22. The concept "indigenous population" is here understood in a technical sense, referring to those groups for whom the United

Nations at present is seeking to clarify rights and standards of protection. They are basically the groups which pre-existed in the area before the arrival of those who are presently dominant, and who therefore often are the most marginalized, like the Aborigines of Australia, the Indians of North and South America, the Samis of Scandinavia, the Veddas of Sri Lanka, and many of the tribal and hill peoples of India and Bangladesh. Norway is presently involved in assistance to some of these groups, in particular South American Indian organizations. Part of the assistance is channelled through Norway's own indigenous population, the Sami, thus strengthening the links between the indigenous peoples of the world.

23. Since 1985, a yearbook has been produced by a Norwegian project group composed of researchers from Bergen and Oslo. In 1986, *Human Rights in Developing Countries* was published by the Norwegian University Press.

24. Ibid., pp. 17-18. While the yearbook is a collective work, the analysis quoted here was written mainly by Jan Egeland.

25. One state voted against the declaration (the United States) and eight abstained. The declaration was adopted by 147 votes in favour.

Economic, Social, and Cultural Rights: UN and Third World Dimensions

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Résumé

Cet article examine les droits sociaux, économiques et culturels et explique pourquoi leur promotion est indispensable à la concrétisation des droits civils et politiques. La pauvreté extrême et la répartition très inégale des ressources constituent la cause première des abus de droit importants. A tout le moins, avoir de la nourriture, des vêtements, un logement, des soins médicaux et une éducation adéquats, sont-ils pré-requis à l'appréciation de plusieurs autres droits.

L'auteur examine ensuite le statut légal du Pacte international sur les droits économiques, sociaux et culturels (PIDESC). Contrairement à ce qu'on croit habituellement, il défend l'idée que les obligations des états signataires de la convention y sont définies de manière très substantielle. La supervision et la mise en oeuvre devraient être abordées par deux voies d'accès : (1) le principe de non-discrimination; et (2) l'impossibilité de déroger aux droits à la subsistance.

Ensuite, l'article examine le travail du nouveau comité de supervision économique, social et culturel, et il indique l'importance d'établir des points de repère quant aux normes minimales, comme base d'évaluation. Plus particulièrement, le comité devra déterminer

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[*] The author, a United Nations official, has written this paper in his personal capacity.

des niveaux de pauvreté et établir quelle proportion d'une population donnée vit au-dessous du seuil de pauvreté.

Enfin, l'auteur se penche sur le "droit au développement", concentré aux Nations Unies. Il indique que ce droit tente de protéger l'individu en tant que sujet (et non seulement en tant qu'objet) du développement; qu'il s'agit là d'un droit nouveau et distinct, qui n'est pas la synthèse de plusieurs autres droits et qu'il a été conçu afin de permettre la réalisation de toutes les possibilités de l'être humain. Ce droit représente aussi la réaffirmation de l'interdépendance qui existe entre les droits économiques, sociaux et culturels d'une part et les droits civils et politiques d'autre part.

I. The Human Rights Ideology

Respect for human rights is the battle-cry of our times. It is the acid test of every civilization and the factor which provides legitimacy or illegitimacy to governments. A government which tramples upon the rights of its peoples is devoid of any legitimacy or respectability whatsoever.

Ever since its establishment, the United Nations has striven to promote the ideology of human rights as the governing ideology for all societies in the world community. In the UN Charter, the peoples of the world expressed their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small." Under article 56 of the charter, all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes of the organization. The purposes of the United Nations, as defined in article 1, paragraph 3 of the charter, include the achievement of international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 55 provides that "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems, and international cultural and educational co-operation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

The Universal Declaration of Human Rights clarified further the content of the obligations which member states of the United Nations undertake upon becoming parties to the charter. The declaration was inspired by the conviction that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and that the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want shall be the highest aspiration of the common people. The declaration insists that "it is essential, if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." The declaration proclaims that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. It enshrines the right to life, stating that "Everyone has the right to life, liberty and security of person." No one, the declaration continues, shall be subjected to arbitrary arrest, detention, or exile, and no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

The conception of human rights in the UN Charter, as further elaborated in the Universal Declaration and in subsequent instruments adopted by the United Nations, is a dynamic one. It encompasses the right of peoples to self-determination, the right of minority groups and of indigenous populations to respect for their culture and way of life, and the right of every individual human being to freedom, dignity, and the satisfaction of his or her economic, social, and cultural needs. It was recognized, in other words, that the ideal of free human beings enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his or her economic, social, and cultural rights as well as his or her civil and political rights. In line with this dynamic conception of human rights, the United Nations proceeded to draft two international treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which governments can ratify and thereby make binding upon themselves. The former covenant restates, in binding form, rights which are contained in the Universal Declaration. The latter covenant amplifies the economic, social, and cultural rights contained in the declaration.

Governments which subscribe to these two instruments undertake to submit regular reports on the measures which they have taken to give effect to their obligations under the covenants. These reports are examined by international bodies consisting of experts drawn from different parts of the world. The reports are considered in the presence of representatives of the government who may introduce the report, provide additional information, answer questions, or provide necessary clarifications.

II. The Importance of Economic, Social, and Cultural Rights

The fundamental importance of economic, social, and cultural rights has been well brought out by the Inter-American Commission on Human Rights, which has warned that neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that leads to acts of terrorism by and against the government. Indeed, it is a general, and well-founded, belief that extreme poverty of the masses—the result in part of a less equitable distribution of the resources of production—has been the basic cause of the terror that has afflicted some countries of the American region and which continues to afflict them.

In resolution 5 (XXXIII) entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories," adopted on February 28, 1977, the UN Commission on Human Rights observed that in many of the cases drawn to its attention concerning alleged violations of human rights, difficult economic and social conditions appeared to prevail in the countries concerned. It recognized, however, that despite these difficulties, the states concerned had a duty to do everything in their power to ensure respect for human rights, including cultural rights, and it requested the Economic and Social Council to appeal to all states, especially the developed ones, and the specialized agencies and non-governmental organizations, to make all efforts to accelerate the establishment of conditions that could promote the unrestricted enjoyment of all human rights. The commission also decided that having so far concerned itself mainly with violations of civil and political rights, it should study violations of economic, social, and cultural rights as well.

A document entitled "Human Rights—Touchstone of Development," submitted by several NGOs to the sixty-first session of the UN Economic and Social Council, requested the council, in preparing a revision of its international development strategy, to take into specific account the application of the standards laid down in the International Human Rights Covenants, thereby clarifying human rights as being a fundamental objective of development and the guideline for its implementation (E/NGO/46).

A powerful statement of the Third World approach to economic and social rights was given by Commonwealth Secretary General S.S.

Ramphal in a speech to Oxford University's Africa Society on March 8, 1977:

> The fundamental rights of humanity are not limited to those civil and political rights which the West has packaged for export, but must encompass also those economic and social rights for whose denial the developed world—including the West—remains substantially accountable.
>
> Human rights have as much to do with the right to work as with the right to vote; with the right to a roof as with the right to privacy; with freedom from starvation as with freedom from oppression. Nor can mere verbal adherence to the legitimacy of economic and social rights suffice so long as a prevailing international economic order persistently entrenches the development differential and enlarges the disparities of wealth and poverty in the world. . . Let as much emphasis be placed at UNCTAD and other fora on economic and social rights worldwide as is sought for civil and political rights through the Helsinki Declaration; and let that emphasis be reflected in a global commitment to the structural changes, nationally and internationally, that are necessary for ensuring those rights to the people. In short, let a resolve to secure fundamental human rights for all men permeate and determine not merely the dialogue of detente but the dialogue of development.[1]

The socialist conception of human rights also places heavy emphasis on economic, social, and cultural rights:

> [These] are rights of citizens to the satisfaction by the State of their material and cultural requirements, stated in the Constitution or other Acts of legislation. To the right of a citizen corresponds the duty of the State to fulfil the requirement. Social rights, as good as other rights, are guaranteed by economic and legal means. The core of the notion of social rights is that the care for satisfying the personal needs and requirements of the individual, for the most effective development of his personality, is not his private matter, but the aim of the society.[2]

Even on the other side of the ideological spectrum, it is recognized that "There exists . . . a profound and necessary connection between human rights and economic development . . . Societies which protect civil and political rights are far more likely to experience economic development than societies which do not. Conversely, programs which seek to eradicate poverty provide a crucial foundation for democratic political institutions." The warning is sounded, though, that "the idea of economic and social rights is easily abused by repressive governments which claim that they promote human rights even though they deny their citizens the basic rights to the integrity of the person, as well as civil and political rights . . . No category of rights should be allowed to become an excuse for the denial of other rights."[3]

The right of an individual to culture means that every human being has the right of access to knowledge, to the arts and literature of all peoples, to take part in scientific advancement, to enjoy life and to enjoy its benefits, to make his or her contribution towards the enrichment of cultural life. However, as has rightly been pointed out by a leading Third World scholar:

> It assumes firstly that the individual has attained a 'standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care . . .' (article 25 of the Universal Declaration of Human Rights). For, if the individual has not reached this standard because he is undernourished or even starving, because he has no decent lodging or lacks the possibility of receiving the most elementary medical attention, it is evident that he will have neither the desire nor the possibility of taking part in the cultural life of his community and there can be no question of his enjoying the arts and literature, still less of participating in scientific advancement . . . A minimum of well-being is necessary if the very notion of culture is to have the least significance. Secondly, the mere existence of cultural rights supposes that the right to education, as set forth in Article 26 of the Universal Declaration of Human Rights, has first found a practical application.[4]

III. Legal Obligation to Implement Economic, Social, and Cultural Rights

The following economic, social, and cultural rights are protected under the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights: the right of peoples to self-determination and to dispose freely of their natural wealth and resources; the equal right of men and women to the enjoyment of economic, social, and cultural rights; the rights to food, health, housing, and education; the right to work; the right to just and favourable conditions of work; trade union rights; the right to social security; the right to protection and assistance of the family; the right to an adequate standard of living; the right to the enjoyment of the highest attainable standard of physical and mental health; the right to take part in cultural life; and the right to enjoy the benefits of scientific progress.

The specifics of many of these rights have been elaborated in various authoritative statements reflecting a consensus of the international community.

The Premises of Legal Obligations in the Covenant

The drafting of the International Covenant on Economic, Social and Cultural Rights was based on certain premises clearly stated by its authors. The first of these was that the covenant contains rights which differ in character. Certain rights can be guaranteed immediately, while others can only be achieved progressively. Obligations under the different rights might, therefore, differ.[5] Notwithstanding this, however, it was agreed that a general article could be placed at the beginning of the covenant in which "all the rules common to economic, social and cultural rights could be consolidated in a single text."[6] The reasoning was that such a general article would contain what was considered to be the firmest commitment which could reasonably be undertaken—on the understanding, however, that this would not prevent spelling out more detailed obligations within particular articles of the covenant.

A second premise on which the covenant was drafted was the recognition of the difference between obligations of conduct and obligations of result. As the French delegate, Mr. René Cassin, remarked at the 270th meeting of the Commission on Human Rights: "Civil law distinguished between obligations leading to final results and obligations to take action. In the present case, civil and political rights, and some economic rights, might connote obligations that would produce actual results; most economic and social rights, however, could only give rise to obligations to take action."[7]

A third premise was that a distinction was drawn between obligations undertaken by a state in the economic and social spheres and the enjoyment of inherent human rights by the individual.[8] It was emphatically asserted that the former could not prejudice the latter. As Mrs. Eleanor Roosevelt, the U.S. delegate, told the Commission on Human Rights at its 269th meeting: "It would be better if the State undertook not to intervene in certain fields, particularly in cultural rights . . . Individuals must be allowed to enjoy human rights beyond those specifically conceded by the State. Freedom to enjoy such rights must be established; otherwise economic, social and cultural rights would be illusory and devoid of real meaning."[9]

The Specific Legal Obligations Undertaken

The key words used in defining "obligation" in the covenant are: to "take steps"; to "guarantee"; to "ensure"; to "recognize"; to "respect" or "have respect for"; to "undertake"; and to "promote." It would be helpful to look at the literal meanings of each of these terms. To *undertake* is to bind oneself to perform, make oneself responsible for, engage in, enter upon, accept an obligation, promise to do.[10] To *recognize* is to acknowledge the validity or genuineness or character or claims or existence of; to accord notice or consideration to, discover or realize the nature of, treat as, acknowledge for, realize or admit that. To *promote* is to advance, help forward, encourage, support actively. A *step* in this context is a measure taken, especially as one of a series in some course of action. To *respect* or *have respect for* is to pay heed to something. To *guarantee* is to answer for the due fulfilment of something, to engage that something has happened or will happen. To *ensure* is to make certain that a thing shall happen, to secure something to or for persons.

The different articles of the covenant distribute these legal obligations as follows:

1. To take steps (article 2(1)—umbrella article). Article 15(2) calls for necessary steps, and adds that such steps shall include certain things.
2. To guarantee (article 2(2)—non-discrimination).
3. To ensure (article 3—equality between men and women). To take appropriate steps to ensure (article 11).
4. To recognize (articles 6-13, 15, 16). Article 13(2) provides that states parties recognize that things "shall be."
5. Undertake to "have respect" (article 13(3)). Articles 1(3) and 15(4) contain an undertaking to "respect." Article 14 provides for an undertaking.
6. To agree (article 23).
7. To submit reports (article 16).
8. To promote (article 1(3)—self-determination).

The General Legal Obligations under Articles 2 and 4

The key for interpreting the legal obligations undertaken by states parties is provided by article 2 of the covenant, which reads as follows:

> 1. Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realiza-

> tion of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
>
> 2. The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
> 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

This article was discussed by the Commission on Human Rights at its seventh and eighth sessions,[11] and by the UN General Assembly at its tenth and seventeenth sessions.[12]

Article 4 is also directly relevant. It provides that limitations on the enjoyment of rights provided for under the covenant may only be such as are determined by law and insofar as this may be compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society.

An examination of the text of the covenant and its *travaux préparatoires* leads to the following conclusion regarding the content of the legal obligations of states parties to implement economic, social, and cultural rights:

A. Whose Rights?

The covenant recognizes rights for *peoples* (article 1); *everyone* (articles 6-9); *individuals* and *bodies* (article 13(4)); the *group* (article 5); the *family*, the natural and fundamental group unit (articles 10 and 11); and the rights of trades unions (article 8(1)(b) and (c)).

B. Geographical Scope

A state which ratifies the covenant undertakes obligations with respect to matters occurring within its own jurisdiction. However, ratification might also have extra-territorial implications to a certain extent, inasmuch as ratification obliges states to respect the right of peoples to self-determination and to pursue international cooperation for the realization of the rights recognized in the covenant, presumably everywhere.

C. Obligations of Conduct

The following principal obligations of conduct are to be discharged by states parties under article 2 of the covenant:

1. To take steps *individually* towards the full realization of the rights recognized in the covenant to the maximum of available resources.
2. To adopt all appropriate means, including particularly the adoption of legislation, towards the full realization of the rights recognized in the covenant, to the maximum of available resources.
3. To take steps, through international assistance and co-operation, towards the full realization of the rights recognized in the covenant.

D. Obligations of Result

The following main obligations of result are to be discharged by states parties under article 2 of the covenant:

1. To achieve the fullest possible realization of the rights recognized in the covenant.
2. To guarantee that the rights enunciated in the covenant will be exercised without discrimination of any kind.

E. Timing

The obligations of states parties *ratione temporis* need to be distinguished in relation to obligations of conduct and obligations of result. With regard to obligations of result, there are things which must be achieved immediately by a state upon becoming party to the covenant. These include:

1. The obligation to provide for recognition, in domestic law, of the rights enunciated in the covenant.
2. The obligation to guarantee in law that the rights enunciated in the covenant will be exercised without discrimination of any kind.

Other obligations of result may be carried out within a reasonable time.[13]

As regards obligations of conduct, the criteria of progressive application need to be seen in the context of the *full* realization of the rights recognized in the covenant. This means that each state party must ensure, as a minimum, that:

1. The means of subsistence are assured immediately to everyone.[14]
2. There is a steady advance towards full realization of the rights recognized in the covenant.
3. The states parties will seek to attain the objectives stated in the covenant as quickly as possible.

F. All Appropriate Means

States may, in the fulfilment of their commitments under the covenant, apply all methods they deem appropriate within the bounds of their domestic law and having regard to the provisions of the covenant. What is of the essence is not the use of a particular procedure, but the effective application of the covenant.

G. Legislative Measures

Legislation, though desirable in most cases, is not obligatory in every instance. A state party has some latitude in deciding whether or not to enact legislation, or to use other appropriate means. This latitude, however, is subject to review by the Committee on Economic, Social and Cultural Rights.

H. International Cooperation and Assistance

1. International cooperation and assistance are to be undertaken for the benefit of all states parties and are not limited to cooperation and assistance for the benefit of developing countries.[15]
2. What is involved is mutual cooperation, not charity.
3. The primary responsibility for realization of the rights recognized in the covenant lies with each state party.
4. International cooperation and assistance must be based on the sovereignty of each state.[16]
5. The duty to pursue international cooperation and assistance does not imply a legal duty to provide assistance.[17]

I. Guarantee of Non-discrimination

1. *De jure discrimination*: Immediately upon ratifying the covenant, states parties must eliminate all discriminatory laws, regulations, and practices affecting the enjoyment of economic, social, and cultural rights.
2. *De facto discrimination* occurring as a result of the unequal enjoyment of economic, social, and cultural rights on account of lack of resources, should be brought to an end as quickly as possible.
3. The guarantee of non-discrimination does not preclude affirmative action in favour of disadvantaged groups.

J. Non-nationals

As a matter of principle, nationals and non-nationals must be accorded the same economic, social, and cultural rights. The .eservation with regard to the according of economic rights to non-nationals of developing countries was meant as a measure of affirmative action in favour of historically underprivileged nationals. It is to be applied only in exceptional situations.

K. Limitations

The limitations provisions in article 4 of the covenant should be applied taking into account the intention of the drafters, according to which the article was meant to be protective rather than limitative. It was not meant to introduce limitations on rights affecting the subsistence or survival of the individual, such as the right to food or health.

In this connection, it should be noted that the "Siracusa Principles" mark an attempt by international jurists to examine the limitation and derogation clauses of the Covenant on Civil and Political Rights, and their implications for the duties of states parties.[18] The terms "prescribed by law" and "in a democratic society" in those principles are applicable *mutatis mutandis* to the interpretation of the equivalent terms in article 4 of the Covenant on Economic, Social and Cultural Rights.

L. Remedies for Breach

The "steps" to be taken in accordance with article 2(1) and the "guarantee" provided for under paragraph 2 include a duty of states parties to provide adequate and effective avenues of recourse for individuals or groups who feel that they have suffered from a breach of the rights recognized in the covenant.

General Observations

From the foregoing examination, it can be seen that there is an impressive degree of substance in the legal obligations of states parties to the covenant—much more than is generally appreciated.

One reasonable conclusion is that the door of entry which might offer the best prospects for initially supervising implementation of the covenant, is the guarantee of non-discrimination in article 2(2). This guarantee is as firm as a legal obligation; is of immediate application; raises an issue that is tangible as well as capable of legal supervision; and could be made justiciable at the domestic level (indeed, U.S. experience proves this[19]). To start supervision of the implementation of the covenant through the door of non-discrimination would have the added merit of focusing on the domestic level, where the emphasis must be placed. This should help to ensure that whatever resources are available are distributed fairly among the population as a whole.

While the other programmatic obligations should certainly be pursued, the non-discrimination door of entry would lift supervision of the implementation of the covenant above the level of generalities and give it a concreteness that compares with equivalent obligations under the Covenant on Civil and Political Rights.

Related to the issue of non-discrimination is the question of remedies for breach of the covenant, with particular reference to legal obligations of immediate application such as non-discrimination or trade union rights. By focusing on such concrete issues to start with, the covenant can grow in stature as an instrument containing solid and justiciable legal obligations.

A final point here. Economic, social, and cultural rights cannot be meaningful without extensive use of the wide variety of instruments available for their protection—in particular, governments, employers, trade unions, the courts, special institutions like the ombudsman, and, of course, the diverse organs of the international community.

IV. The Committee on Economic, Social and Cultural Rights

One of the newer and more interesting instruments of protection is the Committee on Economic, Social and Cultural Rights.[20]

When the International Covenant on Economic, Social and Cultural Rights was being drafted, it was proposed that an expert committee be established to examine reports submitted by states and specialized agencies under the covenant. This was not accepted at the time, and the role was entrusted instead to the UN's Economic and Social Council. Between 1977 and 1986, the council assigned this task to a sessional working group of its own. In 1987, it turned over the responsibility to the Committee on Economic, Social and Cultural Rights. The committee held its first session (of three weeks) in March 1987.

It is too early to pinpoint trends in the committee's work. However, an examination of its deliberations during the first session leads to the following impressions:

1. The committee seems to have approached individual rights in the covenant as *legal rights*, and to have reviewed their implementation as such.
2. The committee appears to have been conscious of the consequences of underdevelopment for the level of realization of rights in the covenant, but to have sought, nevertheless, to examine the implementation of each right as a legal right, mindful of the circumstances existing in each state party. Also, the committee has demonstrated an awareness of the need to accelerate the development of Third World countries and has adopted general statements along these lines.

3. The committee has emphasized the importance of equality of access to, and distribution of, available national resources and has been particularly vigilant where the reporting state encompassed metropolitan and overseas possessions which seemed to be at different stages of development.
4. The committee has shown a special interest in population groups which appear to be at, or below, subsistence level.
5. The committee has noted the relevance, for the implementation of the covenant rights, of maintaining international peace and security, promoting disarmament, and applying scientific and technological developments in favour of human rights.

Economic, Social, and Cultural Rights as Legal Rights

At the start of the committee's session, its basic challenge was described as follows by the head of the UN Centre for Human Rights: "The Committee must show the way to the implementation of economic, social and cultural rights as human rights, conscious of its role as a body of experts committed to assisting the Economic and Social Council in discharging its diverse responsibilities under the Covenant . . ."[21]

An examination of the annual report and the summary records of the committee suggests that it shares this view. One after another, the members of the committee can be seen asking questions of states parties on the following aspects of individual rights:

- To what extent has the right been given statutory recognition?
- How has the right been limited and are limitations excessive?
- What is the difference between the *de jure* and the *de facto* situations?
- What economic, social, or cultural policies are being pursued to implement the right?
- What protection is there against the risk of arbitrary deprivation of the right?
- To what extent has the right been made justiciable?
- Is the principle of non-discrimination being respected in law and in practice?
- Has the government set up "bench-marks" to assist in determining how a right is being implemented?
- Are there sectors of the population at or below the subsistence level, and what is being done on their behalf?
- How are non-nationals being treated in comparison with nationals?

What this pattern of committee examination of reports would seem to suggest is the likelihood of greater *specificity* in relation to human rights obligations. This leads one to think that when dealing with development in the future, states parties will have to be clearer about its core content.

Legal Obligations in the Face of Underdevelopment

The committee has recognized that many member states of the United Nations, in spite of the tremendous efforts they are making, face special difficulties in promoting the full enjoyment of economic, social, and cultural rights. Among the sources of those problems is the insufficient level of socio-economic development in such states; the difficulties are often compounded by circumstances beyond their control.

Accordingly, committee members have emphasized that progressive implementation of the covenant is closely linked to the development process of each country, and to a favourable international context. In the latter connection, the committee has expressed serious concern over the widening gap between developed and developing countries, and over the heavy burden of external indebtedness suffered by the peoples of Latin America, Asia, and Africa. The committee has also stressed the importance of further strengthening international cooperation for development and for an equitable and just economic order.

In sum, the committee has viewed the presentation of a report as an opportunity for dialogue with the governments of the states parties—the purposes being better understanding of their efforts and achievements, and of the problems faced in progressive implementation of the covenant, as well as providing committee assistance (if desired) in overcoming those obstacles.[22]

The Principle of Equality

The first report considered by the committee was that of the Netherlands, comprising three divisions linked under a legal framework laid down in the country's "Charter." The committee was informed that all three pursue their own interests independently and are bound, on an equal footing, to attend to their common interests and to provide mutual assistance. Under the charter, each of the three divisions is responsible for the implementation of basic human rights and freedoms, but it is the responsibility of the country as a whole to guarantee them.

The report described progress made in achieving realization of the rights recognized in the covenant. It was drawn up in two parts, one dealing with the Netherlands Antilles, and the other with the Netherlands itself. Only the part concerned with the former was before the committee at its first session. Members of the committee considered it unfortunate that separate reports were being submitted; this precluded a comparison of implementation of the covenant in the two entities.

The Jamaican expert on the committee, Mr. Rattray, made some telling points in this regard:

> It would appear that responsibility for discharging obligations under the Covenant evolved on the Kingdom of the Netherlands. In that case, did the Kingdom of the Netherlands accept responsibility for discharging such obligations in relation to the Netherlands Antilles, and did it likewise accept responsibility for allocating resources to secure fulfilment of those obligations .... If indeed international obligations were assumed on an equal basis throughout the Kingdom, including the Netherlands Antilles, he questioned whether it was appropriate to examine the report in isolation, separately from the report on the metropolitan Netherlands.[23]

Assuring the Means of Subsistence to All: Bench-marks of Minimum Standards

Committee members have stressed the importance of establishing bench-marks for ascertaining whether the rights in question were being enjoyed by all groups of the population. There was a need to know, from the reports submitted, whether a significant proportion of the population of a state party was living below the subsistence level in any area. It has therefore been suggested that any revised committee guidelines for the preparation of reports should request states parties to identify bench-marks or standards which they consider to be the essential minimum requirements for the realization of each of the rights recognized in the covenant. The guidelines should emphasize the importance of providing detailed information on any groups which have not yet achieved the relevant standards, and on the condition of the vulnerable and disadvantaged members of the society.[24]

V. The Declaration on the Right to Development[25]

The work of the Committee on Economic, Social and Cultural Rights has to be seen in a broader context. A notable contribution to increased understanding has also come from a wide-ranging series of human rights seminars convened over the past three decades by the UN Programme of Advisory Services. Perhaps the most dramatic step forward, however, has been the UN-inspired effort to consolidate a "right to development" in international law. This, in turn, has been part of a larger UN effort to establish a "community-oriented" international economic law, the ultimate aims of which are to bring about equality of opportunity and treatment among nations as well as among individuals within them, and to ensure a life of dignity and freedom for all human beings.

The right to development has a substantial history. It has been considered by various international bodies, such as the UN Commission on Human Rights, the Organization of African Unity (OAU), the UN Educational, Scientific and Cultural Organization (UNESCO), the United Nations University, and the Hague Academy of International Law.

At the request of the Commission on Human Rights, the secretary general of the United Nations presented to the commission, at its thirty-fifth session held in 1979, a study on the international dimensions of the right to development as a human right.[26] The study defined development as the realization of the potentialities of the human person in harmony with the community. The human person was seen as the subject and not a mere object of the development process, and development was interpreted as requiring the satisfaction of both material and non-material needs. Respect for human rights was viewed as being fundamental to the development process, of which popular participation was also regarded as an integral part. It was submitted that there is a solid body of principles based on the Charter of the United Nations and the International Bill of Human Rights—and reinforced by a range of conventions, declarations, and resolutions—which demonstrate the existence of a human right to development in international law. The right, it was further argued, is interdependent with, and indivisible from, other human rights.

After considering the study, the Commission on Human Rights affirmed that the right to development is a human right, and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations. The commission noted that the exercise of the right to development implies the establishment of a new international economic order based on respect for human rights, and it stressed the duty of all member states of the international community, jointly and severally, to create the necessary conditions for realization of the right to development. The commission also requested further studies on the regional and national dimensions of the right to development.[27] And international debate continued into the 1980s.

The UN Declaration on the Right to Development was adopted by the General Assembly in 1986. Article 9 states that all the aspects of the right to development set forth in the declaration are indivisible and interdependent, and that each of them should be considered in the context of the whole. Is an "aspect" the same as an "element of the definition" of a right? The content of the declaration may help to answer this question. The nearest that the declaration comes to providing a definition of the right to development is in article 1(1), which states that "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." One could possibly also include as definitional elements the language of article 8, which reads as follows:

> 1 States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.
>
> 2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

The remaining articles of the declaration proceed to do the following things:

1. *To make collateral statements*, such as the one in article 6(2), that all human rights and fundamental freedoms are indivisible and interdependent.
2. *To identify the subjects and beneficiaries* of the right to development. As noted above, the core definition refers to the right to development as one by virtue of which "every human person and all peoples are entitled." Article 2(1) specifies that the human person is the central subject of development and should be the active participant and beneficiary of the right to development. Paragraph 3 of the same article adds that states have the right and the duty to formulate appropriate national development policies. The subjects and beneficiaries would therefore seem to be the individual, the State, and "all peoples."

3. *To state what the right to development implies.* Article 1(2) states that the right to development *implies* the full realization of the right of peoples to self-determination.
4. *To indicate what the right to development requires.* This is mentioned in places such as article 3(2), which states that the right to development *requires* full respect for the principles of international law concerning friendly relations and cooperation among states. Article 4(2) adds that sustained action is required to promote more rapid development of developing countries. Effective international cooperation is also essential.
5. *To indicate responsibilities.* Article 2(2) states that all human beings have a responsibility for development. Article 3(1) adds that states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.
6. *To indicate duties of the subjects and beneficiaries of the right to development* in provisions such as:

   Article 2(2): *Individuals* should promote and protect an appropriate political, social, and economic order for development.

   Article 2(3): *States* have the right and duty to formulate appropriate national development policies.

   Article 3(3): *States* have the duty to cooperate with each other in ensuring development and eliminating obstacles to development.

   Article 4: *States* have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. Sustained action is required to promote more rapid development of developing countries. Effective international cooperation is essential.

   Article 5: *States* shall take resolute steps to eliminate massive and flagrant violations of human rights.

   Article 6: *All states* should cooperate with a view to promoting, encouraging, and strengthening universal respect for and observance of all human rights and fundamental freedoms.

   States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social, and cultural rights.

Article 7: *All states* should promote the establishment, maintenance, and strengthening of international peace and security.

Article 8: *States* should undertake, at the national level, all necessary measures for the realization of the right to development.

States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 10: *Steps* should be taken to ensure the full exercise and progressive enhancement of the right to development.

7. *To provide a savings clause* in Article 9(2).

Although all of the above-mentioned "aspects" are contained in a document entitled "Declaration on the Right to Development," they surely cannot all be part of the *definition* of the right to development. The elements that seem to be new—the normative statements that appear to have been added to the existing stock of human rights norms—are in article 1(1), which rest on the notions of *participation in*, *contribution to*, and *enjoyment of* development. It would thus seem that:

1. The declaration adds or consolidates a specific new right. This is the first time that such an explicit statement on the right to development has been made in an authoritative international instrument.
2. The declaration insists that development has to be of such a nature that "all human rights and fundamental freedoms can be fully realized." This point is further emphasized in articles 5 and 6. In other words, when there is gross violation of human rights and fundamental freedoms, development is vitiated.
3. The declaration insists on the indivisibility and interdependence of all human rights. It urges full respect for the principles of international law and calls upon all states to promote the establishment, maintenance, and strengthening of international peace and security. These are essentially statements about *inter-relationships* and *linkages*. The right to development cannot, therefore, be considered what some claim that it is, namely, a "synthesis right" encompassing many other rights. Peace, disarmament, and respect for

human rights and fundamental freedoms are *required* for development to take place. They are not, however, miraculously subsumed in an over-arching right, "the right to development."

4. Development is conceptually employed in the declaration in the following senses: narrowly in the legal sense of *a right* (article 1(1)); broadly as *a goal*; relatively as *a guide*; and practically as *a means*. The first sense (a new right) represents an advance upon the International Covenant on Economic, Social and Cultural Rights, which does not contain a specific affirmation of the right to development. However, as we shall see presently, the use of the "development" concept in the roles of goal, guide, and means has numerous examples in the covenant. The declaration and the covenant also cover much similar ground in calling for national and international measures for the realization of economic, social, and cultural rights.

An examination of substantive articles of the covenant shows the concept of development performing the following roles:

1. *Development comes closest to being recognized as a right in article 11 of the covenant,* which refers to the right of everyone to an adequate standard of living "and to the continuous improvement of living conditions." The covenant follows a deliberate scheme in which many articles define the right recognized and then proceed to indicate the steps to be taken, nationally and internationally, with a view to promoting the realization of that right. The continuous improvement of living conditions is indicated *as an element of the right* of everyone to an adequate standard of living.
2. *Development is cast, in some instances, as a derivative of a recognized right.* This is the case, for example, in article 1 of the covenant, dealing with the right to self-determination. After stating that all peoples have the right to self-determination, the article proceeds to add that "by virtue of that right," they fully pursue their economic, social, and cultural development. (The declaration, as already noted, spells out the opposite derivative relationship.)
3. *Development is cast, in some cases, as a goal to be pursued in achieving the realization of a right recognized in the covenant.* One may see this, for example, in article 15 on the right to take part in cultural life. This article specifies that the steps to be taken by the states parties to the covenant shall include "the development and the diffusion of science and culture." Another example is article 13(2e), which includes, among the

steps to be taken to implement the right of everyone to education, "the development of a system of schools at all levels."

4. *In some instances, development is cast in the role of a guide in the implementation of a right recognized in the covenant.* For example, article 12 on the right to the enjoyment of the highest attainable standards of physical and mental conditions requires states parties to take steps "for the healthy development of the child." Likewise, article 13, after recognizing the right of everyone to education, adds that "education shall be directed to the full development of the human personality." (One might think that this latter phrase should have featured explicitly in the declaration's core definition of the right to development.)
5. *Development is also found as a means to the realization of rights recognized in the covenant.* One sees this, for example, in article 6, which recognizes the right to work and then specifies that the steps to be taken by a state party to achieve full realization of this right should include "policies and techniques to achieve steady economic, social and cultural development." One also sees this in article 11(2a), which refers to the need for "developing or reforming agrarian systems in such a way so as to achieve the most efficient development and utilization of natural resources."
6. *Finally, the concept of development is employed, in the covenant, as a factor which may be taken into account in determining the extent of the obligations of a state party to guarantee economic rights to non-nationals.*

Thus the drafters of the covenant definitely had development issues at the forefront of their minds. However, they did not consider it necessary to articulate a right to development. This has now been done in the recently adopted declaration.

VI. Concluding Comments

We have come a long way, since the Second World War, towards universal acceptance of an international order rooted in the legal obligation of states to respect and promote the dignity, rights, and freedoms of the individual everywhere. What is more, economic, social, and cultural rights now occupy a central place in this global scheme of things, with a special sense of urgency *vis-à-vis* the developing countries. But if we are closer to meeting the human rights challenge, we still have a very long way to go.

In the first place, one must ask important questions that raise serious doubts about the strength of national and international performance. For example, is the law being over-used, and is it over-ambitious, ahead of practical possibilities? Is "enlightened" legislation being adopted internationally by "enlightened" elites somewhat removed from their respective populations? Are legal standards being proclaimed without real commitment by states to implement them? Is too much credence given to the argument of many Third World governments that it is extremely difficult, or impossible, to observe basic human rights standards while satisfying the subsistence requirements of their people? Has the international community really managed to set common standards of human rights application while allowing for national differences in economic, social, cultural, and political conditions?

Secondly, despite some notable advances over the past four and a half decades, the developing countries continue generally to fall far short in terms of meeting basic needs and improving the quality of life. The situation is grim indeed. Most of Latin America remains caught in a debt trap. In Africa, severe financial difficulties have been compounded by crippling droughts. South Asia still contains the largest number of people living in absolute poverty. Both domestic resources and international aid are grossly inadequate to the task ahead.

Thirdly, it is not only economic, social, and cultural rights that are at stake. They have been the prime focus of attention in this paper—and deservedly so, given their relative neglect in the human rights literature. But it is vital here, to reiterate that *all* human rights are indivisible and interdependent. A sick and poor economy imperils the enjoyment of civil and political rights. By the same token, their violation impedes the achievement of economic, social, and cultural rights.

The fact is, finally, that the post-1945 period has been one of tyranny and misgovernment in much of the Third World. Corrupt ruling elites often grab the bulk of their nations' resources. Human rights infrastructure is typically weak, and denials of individual freedom are widespread. On the other hand, many governments are trying, in good faith, to meet their people's survival requirements and to advance the cause of human dignity.

The greatest human rights challenge ahead is to find more effective ways—nationally and internationally—of translating recognized state responsibilities into actual practice throughout the developing world.

Notes

1. *Commonwealth Record of Recent Events*, no. 21 (January-March 1977), pp. 12-14.
2. R. Kalfina, "The Development of Social Rights of Soviet Citizens." Paper delivered to the International Political Science Association, Summer 1981, pp. 2-3.
3. U.S. Department of State, *Country Reports on Human Rights Practices for 1983* (Washington, D.C.: U.S. Government Printing Office, 1984), pp. 1475-76.
4. B. Boutros Ghali, "The Right to Culture and the Universal Declaration of Human Rights," in UNESCO, *Cultural Rights as Human Rights* (Paris, 1970), p. 73.
5. See E/CN.4/SR.271, p. 7—comments of the Yugoslav delegate.
6. See comments by Mr. R. Cassin (France) in E/CN.4/SR.270, and by Mrs. Roosevelt (U.S.A.) in E/CN.4/SR.269.
7. E/CN.4/SR.270, p. 11.
8. See E/CN.4/SR.269, p. 8—comments of the Yugoslav delegate.
9. E/CN.4/SR.269, p. 6.
10. These and the subsequent definitions are taken from the *Concise Oxford English Dictionary*.
11. See E/CN.4/SR.203-208, 217-218, 231-234, 236-237, 268-275, 303.
12. See A/C.3/SR.655-659, 1181-1185, 1202-1207.
13. See article 14 of the covenant.
14. See article 1(1) which protects a people's means of subsistence. See also E/CN.4/SR.269, p. 8: "no one . . . could live without the means of subsistence"—remark by the delegate of Yugoslavia.
15. See article 11(1): international economic cooperation based upon the principle of mutual benefit and international law.
16. See article 11(1): international cooperation based upon free consent.
17. Means of international action are indicated in articles 11, 22, and 23 of the covenant.

18. See "The Siracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights," *Human Rights Quarterly* 7 (February 1985), pp. 3-14.

19. See *Economic and Social Rights in the United States: Proceedings of the General Education Seminar at Columbia University*, Vol. 7, No. 2, Fall 1978.

20. This committee should be distinguished from two related bodies: the Commission on Human Rights, a general monitoring agency that has operated since the late 1940s under the authority of the United Nations; and the Human Rights Committee established in 1976 under the International Covenant on Civil and Political Rights. For some incisive recent discussion of these other bodies, see K.O. Matthews and C. Pratt (eds.), *Human Rights in Canadian Foreign Policy* (Montreal: McGill-Queen's University Press, 1988), Chapters 5 and 6.

21. E/CN.4/1987/SR.1, para. 7.

22. E/C.12/CRP 2/Add. 12, paras. 3-5.

23. E/C.12/1987/SR.5, para. 42.

24. E/C.12/1987/CRP.2/Add. 10, para. 4.

25. General Assembly Resolution 41/128 (1986).

26. E/CN/.4/1334.

27. Commission on Human Rights Resolutions 4 (XXXV) and 5 (XXXV). At their Monrovia Summit in July 1979, the OAU heads of state and government also affirmed the existence of a human right to development.

L'inadéquation des droits fondamentaux aux pays en voie de développement : pour une réforme des instruments internationaux

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Jean-Denis Archambault

Summary

Canada's recent decision to tie development aid to respect for human rights raises fundamental questions with regard to the capacity of human rights law and international agencies to define firm and systematic criteria for the implementation of Canadian foreign policy.

On the one hand, we find the very notions of "law" and "rights" to be put into question. In fact, international laws necessarily imply recognition of the rule of law, a central concept which a number of states have not yet put into effect. Also implied is recognition of human rights, which, before they are fundamental, are rights, entailing the bestowal of all of their attributes (obligation, interdiction, exceptions) upon the individual. Obviously, these views are not congruent with those of certain societies, in which there is an emphasis on individuals' duties and obligations towards the community rather than on their rights. Fundamental rights are only as valid as the laws that uphold them: their quality of being fundamental does not allow for modification of a country's intrinsic values, morals, and judicial structures.

On the other hand, recognition of human rights meshes well with the Western concept of the state, in which respect for human rights is implicit, and which is indeed constituted taking into account the supremacy of these rights. In this sense, international human rights laws also serve as surveillance over the state and, ultimately, as protection for individuals against it. However, government repre-

sentation by countries at international fora provides no guarantee of these governments' institutional and national existence within their respective borders. In spite of *de facto* powers offering the appearance of a government, in many developing countries such powers have no legal status. What remains, after repeated coups, a perpetual state of siege, and unremovable leaders, is simply the illusion of a state. Elsewhere, many states are born through the fragmentation of traditional nations and of peoples and the creation of artificial boundaries. Thus we see states with putative and fictitious laws, because of the lack of a truly national will to formulate them.

Finally, universality, the common ideal represented in the very nature of the fundamental rights enumerated in the Universal Declaration of Human Rights, is debatable. The prodigiousness of the declaration itself, and of the successive generations of rights which have been added to it, has had the effect of a quantitative inflation of human rights and therefore of their general depreciation. This is particularly true for underdeveloped societies, for which the notions of rights and law and the principle of legality have been foreign. The right to education, however universal it is, is not as fundamental as the right to life. And to declare three wide categories of indivisible, interdependent, and equally important rights does not resolve the disproportionate dilution of these rights.

It would perhaps have been more valuable to attempt to define fewer rights and to promote only the most crucial—those that are least likely to give rise to cultural incompatibility—instead of intermingling fundamental and complementary rights. Developing countries are troubled by the dichotomy between certain complementary rights and their own cultures, and this confusion obscures the notion of universality and the hierarchical superiority of truly fundamental rights. Weighting the priorities of various human rights would permit geo-cultural relativity to come into play, while preserving essential rights.

In conclusion, Canada must not go down the path of imposing its own code of ethics, however humanitarian it may be, on developing countries. On the contrary, Canada must involve itself in putting reform of universal fundamental rights on the agenda of nations. The creation of the International Centre for Human Rights and Democratic Development indicates Canada's intention to take a leadership role in research into and dissemination of thinking with regard to fundamental rights. This is the path Canada must take in order to persuade countries where human rights are flouted to respect these fundamental rights.

Introduction

À l'instar d'un bon nombre de pays occidentaux industrialisés, le Canada est venu, au terme de lents tâtonnements politiques, à associer l'octroi de son aide aux pays en voie de développement (ci-après PVD) à leur respect des droits de la personne.[1] Successivement, les secrétaires d'État aux Affaires extérieures ont répété que le Canada "peut prendre en compte les considérations relatives aux droits de la personne au moment d'établir l'admissibilité à l'aide canadienne et d'en décider la nature et le montant à accorder,"[2] "car l'aide constitue manifestement un moyen de pression."[3] En 1987, l'Agence canadienne de développement international entonnait le même refrain, assurée que "le gouvernement est fermement déterminé à intégrer pleinement les droits de la personne dans les relations étrangères du Canada."[4] Tous comprenaient évidemment qu'exception serait normalement maintenue pour l'aide dite humanitaire, "accordée sans condition, par pure compassion."[5]

Entre-temps, une copieuse littérature[6] relative à l'articulation des pressions économiques et des droits fondamentaux, discutait fort bien des diverses stratégies disponibles ainsi que de leur potentialité de succès.[7] Peu d'auteurs toutefois formulèrent des propositions aussi hardies que celles arrêtées en mai de 1987 par le Comité permanent des Affaires étrangères et du commerce extérieur de la Chambre des Communes. À l'issue de ses réflexions, le Comité recommanda entre autres :

> que des critères des droits de la personne soient élaborés de façon cohérente dans le cadre de la politique globale du Canada en matière de relations étrangères et qu'ils soient mis en application de façon *universelle, uniforme* et sans équivoque [puis] que de tels critères englobant à la fois les droits individuels, civils et politiques, et les droits sociaux-économiques et culturels soient dérivés des *critères reconnus dans le droit et les pactes internationaux* sur les droits la personne.[8]

Ces résolutions auraient eu pour but de faciliter la mise en oeuvre de mécanismes de vérification du respect réel des droits de la personne par les pays récipiendaires d'une aide canadienne. Les parlementaires avaient cru bon, dans cet esprit, de joindre à la politique canadienne sensiblement la substance et la définition internationales des droits de la personne.

Peu après, le gouvernement du Canada fit connaître son endossement mitigé aux recommandations susrelatées. Les critères édictés dans les instruments internationaux, répliqua-t-on, "ont une portée très générale [et] il est difficile de tracer des règles fixes et uniformes dans un domaine aussi controversé que celui des droits de la personne."[9] Aussi, sous réserve du maintien de sa politique inconditionnelle en matière d'aide humanitaire, l'autorité gouvernementale continuerait à intégrer aide aux PVD et droits fondamentaux selon des modalités plutôt établies comme suit: d'abord "le degré de respect accordé aux droits de la personne est *un* facteur dans la détermination de l'admissibilité d'un pays à l'aide canadienne au développement"; ensuite, "lorsque nécessaire, les discussions politiques avec les pays en développement sur la coopération au développement *feront état* du respect des droits de la personne."[10] En d'autres mots, le gouvernement fédéral décline le soin "de concilier dans un *cadre général* les divergences [des autres pays et nations] sur le plan des priorités et des valeurs."[11] En conséquence et au moins pour quelque temps encore, les cas de violations des droits fondamentaux par les pays récipiendaires de l'aide canadienne aux PVD seront mesurés à la pièce, suivant leurs propres contextes et justifications politiques.

D'aucuns trouveront critiquable la position élastique finalement retenue par l'Exécutif, position estimée trop extensible, voire consentante. Il se pourrait même, d'ailleurs, que ceux-là aient effectivement raison. Mais il n'en demeure pas moins que la difficulté soulevée par le gouvernement canadien reste toute entière: le droit et les instruments internationaux des droits de la personne ne jouissent pas de la reconnaissance ni de l'autorité nécessaires à l'établissement de critères fermes, systématiques et, partant, utiles à l'implantation des politiques extérieures canadiennes. Dans l'hypothèse où la politique extérieure d'Ottawa serait à cet égard jugée trop timide, il ne faudrait pas en retour chercher du côté du droit et des instruments internationaux relatifs aux droits de la personne, la vigueur ou l'ascendant universel dont on voudrait présentement doter les critères de l'aide canadienne aux PVD. Ici, faisons-nous remarquer, la capacité des outils internationaux relatifs aux droits de la personne à régir les instances internationales n'est point mise en cause. Mais, quelle qu'elle soit, telle aptitude ne se transpose pas forcément avec un égal bonheur au plan des relations bilatérales.

Cette assertion cardinale à notre étude sera traitée en trois chapitres comportant chacun un énoncé principal, objet d'une brève démonstration, vu le cadre réduit de l'ouvrage. En premier lieu l'idée de droit, surtout en droit interne, présente parmi les régions du monde des discordances conceptuelles que ne réussissent pas à harmoniser véritablement les actes internationaux sur les droits de la personne. La notion de *droit*, d'où droit de la personne tire son sens, ne véhicule pas chez les PVD une essence ni, encore moins, un contenu effectif analogues à ceux des nations occidentales assujetties au principe de la légalité *(rule of law)*. Dans un second temps—car c'est bien contre ou de lui que, en l'occurence, on exige le respect des droits de la personne—l'*État* des PVD ne possède pas une existence institutionnelle et nationale non plus que, accessoirement, des ressources matérielles propres à garantir efficacement *quelque* droit. Le statut international d'État conféré à certains pays ne les dote pas simultanément d'une âme étatique intra-nationale. Or, tout comme il n'y a pas d'État sans primauté du droit, le droit nécessite la transcendance de l'État sur le Pouvoir, théorème qui au fond jumelle les deux premiers volets de notre exposé et contribue à son unité thématique, soit l'inadéquation des instruments internationaux à certaines fins de politique étrangère à l'égard du respect des droits de la personne par les États des PVD. Le troisième et dernier chapitre aborde plus directement la hiérarchisation et la relativisation des droits fondamentaux promulgués dans quantité d'instruments internationaux.[12] Cette avalanche de droits contribue en quelque sorte, mais plus ou moins consciemment, à l'allègement des obligations et responsabilités étatiques laborieusement déchiffrées par les PVD. Autrement dit, le langage, pourtant une des multiples exigences juridiques, du reste librement convenues par les membres de la communauté internationale, traduit chez certains pays parfois des points de départ immédiats et chez d'autres tantôt des destinations éloignées. La quiddité des droits fondamentaux y perd, leur évidence se dissout dans une masse honnêtement et prodigieusement généreuse.

1. L'ordre juridique inconnu

Avant de proclamer la substance particulière des divers droits fondamentaux, les instruments internationaux modernes relatifs aux droits de la personne énoncent, habituellement en préambule, les prémisses lointaines de ces droits. Les auteurs des textes internationaux ont en effet raison de comprendre que le respect des droits fondamentaux suppose et à la fois propose des valeurs et un ordre juridique donnés. Au demeurant, la reconnaissance et la mise en oeuvre des droits d'un individu, fussent-ils privés ou publics, civils ou commerciaux, patrimoniaux ou extrapatrimoniaux, nécessitent toujours l'existence préalable d'un système favorable au droit ou à quelque droit ayant obtenu l'assentiment social voulu.

Il ne s'agit pas en l'espèce de déterminer la place de la norme ou de la règle de comportement (*the law*) dans un ordonnancement collectif, question d'une antériorité certaine toutefois.[13] Les préambules des actes internationaux ne vont pas aussi en amont du droit. On note cependant parmi les considérants énumérés par les assemblées, deux importants axiomes sur lesquels reposent tous les droits fondamentaux promus dans les documents juridiques internationaux. D'abord, l'idée qu'un ou des droits, sans contrepartie spécifique de la part de leurs bénéficiaires, constituent "le fondement de la liberté, de la justice et de la paix dans le monde."[14] Avant d'être fondamental, un droit de l'Homme[15] est un *droit*, c'est-à-dire qu'il confère les attributs de tout droit, notamment la capacité d'exiger une prestation d'une autre personne ou de lui opposer une défense ou exception. Or, asseoir "la liberté, la justice et la paix dans le monde" principalement sur des *droits*[16] ne concilie peut-être pas pleinement les vues de ceux qui, comme nous le relèverons, donnent au contraire prééminence aux devoirs et obligations des individus envers la communauté, sur tout droit.

Deuxièmement, le Préambule de la *Déclaration universelle des droits de l'Homme* pose franchement "qu'il est essentiel que les droits de l'homme soient protégés par un régime de droit [*rule of law*[17]] pour que l'homme ne soit pas contraint, en suprême recours, à la révolte contre la tyrannie et l'oppression." Curieusement, cette affirmation que l'on a logée parmi les considérants emporte un poids vraisemblablement égal sinon supérieur à celui de certains droits fondamentaux proprement dits. Astreindre le pouvoir étatique au principe de la légalité (*rule of law*) permet déjà de protéger, sans les enchâsser expressément, un ensemble de droits fondamentaux individuels. Parallèlement, l'enchâssement des droits de la personne qui ne s'accompagnerait pas de la mise en oeuvre du principe de la légalité perdrait de sa force effective. Et ce principe de la légalité, condition de la protection des droits fondamentaux assumée par la *Déclaration universelle des droits de l'Homme*, n'a pas atteint la majorité des terres de la planète. Il se heurte contre des valeurs réfractaires dont naissent des pouvoirs autoritaires et où persiste la pénurie des ressources humaines et matérielles normalement requises pour l'implantation d'un régime de droit.

1.1 La prépondérance excessive des droits

Lorsque, au sortir de la seconde guerre mondiale, fut adoptée et proclamée la *Déclaration universelle des droits de l'Homme*, tous les États membres contractaient formellement les mêmes engagements, endossaient les mêmes canons juridiques. Pour plusieurs PVD cette adhésion n'allait pas signifier beaucoup et il serait mal venu, aujourd'hui encore, de le leur reprocher.

Le poids des PVD dans la rédaction de ce document historique n'a pu compter très lourd, en un temps où trop d'entre eux échappaient tout juste et souvent péniblement aux emprises du colonialisme. L'expérience a du reste démontré depuis que, pour moult raisons, ils ne furent pas immédiatement mûrs pour les transactions internationales. S'affirmer aussi rapidement, appréhender puis formuler exactement leurs identités culturelles, ethniques et *humaines* posaient des défis impossibles. Ils vinrent donc sans préparation suffisante participer à une joute, au mieux amicale, où deux puissantes équipes, l'Est et l'Ouest, marqueraient les points.[18] Les PVD acquiescèrent du bout des lèvres pour gagner à peu de frais le privilège de se joindre au "banquet des nations."

Alors quand l'Occident parla de *droit* (*rights*),[19] les PVD lui laissèrent dire *droit* en dépit de ce que pas même l'idée ni conséquemment un vocable porteur de celle-ci, n'aient auparavant existé dans leur langue.[20] Tout comme, à titre d'illustration imparfaite il va sans dire, on ne trouvait guère d'eau gelée, phénomène naturel, sur le territoire des anciens royaumes d'Afrique occidentale, nuls idiômes fon, goun, nagot, peuhl, pila, bariba, somba ou youruba ne connaissaient, jusqu'à la venue de l'européen, le terme "glace" ou quelque équivalent indigène. Et pourtant l'eau gelée, phénomène exporté ou créé artificiellement, et incidemment le mot glace, sans traduction, ont rejoint le golfe de Guinée et ses peuples jusqu'à y entraîner des excès technologiques et économiques telle la patinoire intérieure du renommé hôtel Ivoire à Abidjan.

De retour au droit, il ne faut pas sourciller en entendant un africaniste déclarer que "the very concept of natural law, the concept of right or a body of rights vested in human beings as such, belongs to Western civilization."[21] Cela ne nie pas tout *droit* aux non-occidentaux ni ne conteste l'existence même du droit. Hountondji allègue plutôt que l'Europe, qui n'aurait pas selon lui inventé les droits de la personne ou la dignité humaine, "[has] produced, not the thing, but the discourse about the thing."[22]

Ailleurs, sous une autre forme, en vertu d'une légitimité étrangère à la nôtre, des régimes eux aussi déficients ont accumulé des traditions humaines qui reposent d'abord sur les devoirs et obligations de l'Homme.[23] "As part of moral discourse, duty might seem more obvious, and is certainly more ancient, than right."[24] Justifiable si l'on veut dans son contexte occidental, le concept de *droit* préconisé par les instruments internationaux contredit l'adhésion de milliards d'êtres humains aux mérites, supérieurs selon eux, du *devoir*. Ce droit, écrit Gatlung,"is not really based on mutuality, or at least not explicitly. The citizen has only rights, the government has only duties, and the UN General Assembly is only a source of norm production."[25] On ne manquera pas évidemment d'objecter qu'en 1948 les forums internationaux désiraient au premier rang protéger l'individu contre l'État dont les comportements monstrueux des guerres mondiales venaient de démontrer le dangereux potentiel. Soit. Mais les PVD savaient à ce moment que les pouvoirs occidentaux étaient les véritables coupables qui provoquèrent ces conflits fous et causèrent tant de violations des droits fondamentaux. Au surcroît, comme nous le verrons au second chapitre, les jeunes nations des PVD ignoraient encore jusqu'à l'idée d'État et ne pouvaient alors tant craindre leurs pouvoirs naturellement proportionnés à leurs sociétés.

"Rights, notes Pandeya, are connected with given socio-economic, political and cultural development. My awareness of my rights is through my involvement in a given situation; it does not arise in a vacuum."[26] La conscience et l'acceptation d'un *droit* par un individu résultent des valeurs qu'il lui impute. Pareillement, souligne Mathieu, "'exercising a right' implies taking decisions, and hence having a certain power of initiative. To attribute rights to a being completely lacking in this power would be incongruous."[27] Vincent ajoute: "the assertion of a right... itself presupposes a system in which having a right to anything means something, including the freedom to assert the right."[28] Ainsi la société traditionnelle africaine octroie certains droits à la communauté villageoise ou familiale "élargie."[29] Ces droits bénéficient ultimement à l'individu. Mais celui-ci ne peut les exercer personnellement et ce n'est qu'à travers l'acquittement de ses multiples obligations et devoirs envers le groupe qu'il pourra en obtenir des retombées. En somme, offrir un droit, même réputé universel, ne constitue pas nécessairement un don gratuit. Il implique pour les ressortissants des PVD caractérisés par une certaine idiosyncracie, des ajustements majeurs et coûteux.

1.2 Le principe exogène de la légalité

Depuis les droits (*rights*) pris isolément, l'étude d'un ordre juridique doit nous mener vers l'ensemble du droit (*law*) perçu dans sa dimension systémique. Ainsi le fait le Préambule de la Déclaration universelle lorsqu'il prône un régime de droit (*rule of law*). Qu'on l'appelât régime de droit, primauté du droit ou suprématie de la loi, le principe de la légalité suppose dans son plus simple entendement que tous seront effectivement soumis au droit.

Rhoda E. Howard constate avec justesse l'importance de ce principe face aux autres droits.[30] En effet, tout droit (*right*) privé ou public, fondamental ou secondaire—s'il en est—n'existe qu'à la condition de sa mise en oeuvre pragmatique. Dans la plupart des sociétés occidentales, la soumission tant de l'État que de l'individu à la loi s'accomplit par l'intermédiaire d'un pouvoir judiciaire gratifié de qualités idoines. Non seulement y estime-t-on hautement les droits (*rights*) mais, conformément à cette conviction, veut-on en assurer la prépondérance sur les puissances passagères. D'où l'importance extrême des engrenages judiciaires dans la mécanique de contrôle du pouvoir au sein d'une société qui adhère à la prééminence du droit (*law*).

Les droits fondamentaux que l'on brandit contre l'État ou que l'on réclame de lui reposent sur le respect préliminaire du principe de la légalité.[31] La Commission internationale des Juristes a elle aussi vu l'intime corrélation entre droits fondamentaux et principe de la légalité.[32] "Les droits de l'Homme procèdent directement de l'aménagement des institutions politiques. Ils se trouvent donc dans une dépendance par rapport au régime juridique de la société prise comme un tout."[33]

Les droits fondamentaux valent ce que vaut le droit: la qualité de fondamental conférée à un droit par une instance internationale ou, plus paradoxalement, nationale, ne modifie pas les valeurs et moeurs ni les structures juridiques internes d'un pays.[34] En ce cas-ci, l'obstacle à la défense des droits de la personne n'origine pas principalement d'une pénurie de ressources matérielles, techniques et professionnelles aptes à assurer le fonctionnement d'un système légal ou judiciaire. Le malaise plonge ses racines plus profondément dans la conscience collective des peuples.

On nous permettra d'emprunter à Ramon P. Diaz des réflexions singulièrement révélatrices de l'irréconciliable dichotomie entre la lettre et l'esprit de la loi chez les nations latino-américaines:

> The Latin American's concept of the State has no conspicuous place for the judiciary. For a Latin American the making of laws is everything; their enforcement nothing. The region produces a great many lawyers, but very few of the more competent or ambitious would comtemplate joining the bench. They would much rather sit in Congress, where a type of advocacy more suited to their talents—attaching more weight to eloquence and less to learning—is prevalent. Judges tend to stand much lower socially than in the Anglo-Saxon countries. Court-houses tend to be depressingly poor. Proceedings tend to be lengthy and dominated by red tape. Since as a rule there are no juries only very rarely has the ordinary citizen any kind of contact with judicial affairs.[35]

Francisco Miro Quesada dépeint le même tableau quand il constate une histoire sud-américaine continuellement en contradiction avec ses lois, et déplore ce "gulf between law and history."[36]

Les lois constitutionnelles des nations en développement regorgent de dispositions libérales à l'égard des droits fondamentaux de leurs citoyens. Certaines pourraient sans doute inspirer les pays industrialisés. Mais elles demeurent lettre morte ou perpétuellement contournées par les mesures d'exception, les états de siège et d'urgence politique ou économique.[37] Trop de lois publiques calquées sur les idéaux occidentaux restent culturellement inaccessibles à l'ensemble de la population.[38] De sorte que le système légal et judiciaire juxtaposé *constitutionnellement* sur un substrat hétérogène et incompatible, effleure à peine l'exercice réel du pouvoir sous toutes ses formes.

Il est donc correct de conclure, comme le fit Richard A. Falk, que "for various reasons associated with public opinion and pride, governments are quite ready to endorse (even formally) standards of human rights despite the absence of a will to comply with the standards."[39] Nuançons toutefois en soulignant que ces régimes maintiennent à l'endroit des actes internationaux une attitude regrettablement identique à celle qu'ils gardent envers leurs propres lois et droits fondamentaux. Pour eux *tout* droit (*right*) interne ou supranational, fondamental ou autre, plane au-dessus du corps social sans nécessairement le toucher. Ils ne voient donc aucune difficulté à souscrire à la lettre des lois, à moins que, comme en république islamique, ils n'en rejettent l'esprit même. Or la suprématie du droit naît beaucoup plus de l'esprit qui anime la mise en force des lois qu'elle ne découle de leur lettre.

Plusieurs analystes ont déduit qu'il fallait consolider les rouages administratifs de la justice des PVD:[40] un pas dans la bonne direction. Néanmoins bien qu'il comporte de nombreux et complexes aspects techniques et administratifs, le principe de la légalité requiert d'abord la conversion consentie, même si induite, de la société, Pouvoir inclus, vers un ordre juridique exogène à certains PVD.[41]

2. L'État imaginaire

L'État apparaît pour une première fois au sixième considérant du Préambule de la *Déclaration universelle* de 1948, prévoyant "que les États Membres se sont engagés à assurer, en coopération avec l'Organisation des Nations Unies, le respect universel et effectif des droits de l'homme et des libertés fondamentales." Sauf cet engagement partagé avec l'ONU, les mentions expresses de l'État se feront rares[42] jusqu'à l'adoption des *Pactes*[43] de 1966. Là au contraire, la quasi totalité des dispositions, particulèrement du *Pacte international relatif aux droits économiques, sociaux et culturels*, s'adresseront à l'État nommément. Le créancier ultime des obligations étatiques, sans égard à leur teneur juridique, sera l'individu.

L'État assume les engagements stipulés aux instruments internationaux des droits de la personne. Soit que constituant une menace contre l'individu, l'État doit être surveillé et modéré; soit, au meilleur des cas, qu'il use à bonnes fins des facultés et instruments que la société lui a confiés et doive subsidiairement les consacrer à sa tâche de surveillant et modérateur des pouvoirs internes de la nation. En somme, les actes internationaux des droits de la personne prolongent dans leur domaine particulier la vocation de l'ONU qui consiste à favoriser principalement au niveau de ses membres, les États, un climat international profitable à l'humanité.

La poursuite de cette séduisante dialectique peut alors déboucher sur le raisonnement suivant: l'*État*, membre de la communauté des nations et libre adhérent aux actes internationaux, doit respecter ses engagement juridiques, à plus forte raison ceux tributaires des droits fondamentaux.[44] À défaut par lui de ce faire, et devant l'impuissance des organismes internationaux à le discipliner, l'État violateur doit savoir que d'autres États pourront unilatéralement lui imposer des sanctions punitives, réparatrices ou, qui sait? préventives. D'où conséquemment la volonté des uns d'en appeler aux critères juridiques internationaux suffisamment reconnus et endossés, pour régir certains rapports bilatéraux entre un pays comme le Canada et les États des PVD.

Cette stratégie présuppose l'existence de l'entité étatique, condition que l'on croit déjà remplie par la présence de l'*État* à l'ONU. Arrive cependant le point précis où cède un autre maillon du syllogisme: le concours d'un État à l'ONU, forum extérieur à la nation que représente cet État, ne confirme ni ne présume de l'existence d'un État interne et institutionnalisé au sein même de ladite nation.[45]

2.1 *L'État sans Droit*

Comme l'enseignait le regretté professeur Georges Burdeau, "toute société politiquement organisée n'est pas un État."[46] Nombreuses sont les nations subjuguées à un pouvoir unique ou multiple et qui s'extériorisent à travers les mécanismes étatiques de l'ONU, sans par ailleurs posséder sur le plan interne l'essence et les attributs d'un État.

L' institution de l'État implique un ordre juridique. Le pouvoir peut au contraire s'asseoir sur d'autres forces, dont les armes, comme chez les régimes militaires où il est une voie de fait. Le pouvoir repose sur des personnalités et les moyens matériels qu'elles contrôlent. Le professeur Burdeau y oppose le concept d'État qui

> purifie le pouvoir en le détachant des volontés des chefs pour le rendre tributaire de l'idée que la collectivité se fait de son avenir et de l' organisation politico-sociale propre à le maîtriser. Or cette idée qui est l'assise première du pouvoir est aussi le fondement du droit . . . L'État est limité par le droit parce que sa puissance est juridiquement conditionnée par l'idée de droit qui la légitime. L'État ne se limite point; il naît limité.[47]

L'idée d'un État intrinsèquement maîtrisé chevauche incidemment le principe de la légalité mentionné à la section précédente. Tout droit (*right*), avons-nous dit, prend souche dans un environnement juridique propice au droit *(law)*. Un État existe chez une nation qui rationalise le pouvoir et le soumet à la règle de droit. Cela n'écarte guère le pluralisme des idées de droit ou de suprématie de la loi. La notion d'État accepte plusieurs versions pourvu qu'ultimement elle harnache le pouvoir de fait, le contraigne au droit.

La déficience des droits et d'un principe de légalité chez les PVD est l'un des empêchements causals ou concommitants à l'apparition de l'État au sein de la nation. En dépit des pouvoirs factuels qui étalent sur la scène internationale toutes leurs apparences étatiques, dont la souveraineté,[48] plusieurs PVD souffrent du vacuum juridique, de la non-légalité de leurs pouvoirs. On trouve certes abondance de dispositions normatives,[49] notamment constitutionnelles, régissant l'exercice et la succession du pouvoir. Mais il n'en reste, après les coups d'état répétés, la perpétuité de l'état de siège et l'inamovibilité des chefs, qu'un trompe-l'oeil étatique.[50] La tâche ne consiste plus à identifier les mandataires de l'État; il n'y a ni État ni droit ni évidemment droits fondamentaux. Persiste un pouvoir qui entend peu à ces trois notions, encore moins aux droits de la personne écrits dans le langage international destiné aux États, au bénéfice du genre humain.

2.2 L'État sans nation

Nous puisons derechef aux travaux du professeur Burdeau:

> Dans tous les pays anciens, c'est la nation qui a fait l'État; il s'est lentement formé dans les esprits et les institutions unifiés par le sentiment national. Dans l'État nouveau, tel qu'il apparait sur le continent africain, c'est l'État qui doit faire la nation. Seulement, comme l'État ne peut naître que d'un effort national, le drame politique s'enferme dans un cercle vicieux.[51]

Les jeunes États des PVD présentent en réalité un État putatif, par surcroît avorté faute de nation pour le concevoir. Trop d'éléments manquent encore à l'éclosion d'une nation apte à générer un État. Le territoire, lorsqu'il peut être géographiquement délimité,[52] regroupe ou divise des peuples selon des frontières factices déplorablement héritées des administrations coloniales. Ainsi les métropoles impériales déchirèrent longitudinalement les peuples subsahéliens naturellement et séculairement formés dans l'axe est-ouest.[53] S'ensuivit un désastreux morcellement social et humain qui laissa des miettes nationales agglutinées en contrées lilliputiennes (Bénin, Gambie, Guinée-Bissau, Libéria, Sierra Leone, Togo, etc.) à l'ombre de colosses désorientés et démesurés comme le Nigeria. Les exemples ne manquent pas, également dans la région du sud-est asiatique, de démembrements territoriaux ayant produit des peuples fragmentés en mal de nation authentique.

Il n'y a pas lieu en conséquence de s'étonner devant la débilité, pire, la complicité occasionnelle du pouvoir à l'égard des violations organisées et massives des droits fondamentaux dans les PVD. Les fratricides ethniques entre Tutsi et Hutu,[54] par exemple, vieux de plusieurs générations, s'enclenchent d'autant plus vivement que les deux peuples ont été charcutés en Burundi et Rwanda, pour satisfaire les intérêts européens de l'époque. Sur papier toutefois la *Constitution de la République du Burundi* ne lésine pas: "La personne humaine est sacrée. L'État a l'obligation de la respecter et de la protéger" et "tous les Barundi sont égaux en droits et en devoirs sans distinction aucune de sexe, d'origine, de couleur, de religion ou d'opinion."[55] Un État et des droits rendus fictifs par, entre autres raisons, la carence initiale de nation.

La nation demande un consensus social régulièrement négocié, à ne pas confondre avec un ordre collectif total, unitaire et allergique au pluralisme comme il s'en trouve en Amérique du Sud[56] ou chez certaines républiques islamiques. La nation procède des idées de ceux qui la composent.[57] Conclure sur des indices matériels modernes et apparents[58] que tous les peuples de la planète cheminent inéluctablement vers l'archétype de l'État-nation, présume de l'esprit qui anime leur réception passive des "transferts technologiques." Quand il aurait, à tout hasard, réussi à mettre le Chili à l'heure des indicateurs économoniques, le régime Pinochet n'aurait renforcé ni l'État ni la nation, mais le pouvoir. En ont témoigné le Brésil, l'Argentine et l'Iran du Shah.

Les critères établis par les documents internationaux sur les droits de la personne visent l'État et mettent à sa charge le respect des dits droits. R.J. Vincent fait remarquer à bon escient que "Societies, or nations, or peoples, express themselves *externally* in states. When the Charter of the United Nations refers to peoples, it means states."[59] Les PVD se sont munis d'un État extérieur pour satisfaire l'Occident qui dirige l'orchestre international. Au for intérieur, leurs États n'ont pas vu le jour malgré la prolifération de normes et de décrets, de bureaucrates et de contrôleurs. Au mieux la nation est en devenir, comme le droit. Les pouvoirs s'y relaient de façon rudimentaire. Les droits fondamentaux individuels qu'il faut leur opposer devraient être formulés de façon à les atteindre eux, pouvoirs, et non l'État, mirage.

3. La dilution des droits fondamentaux

Avant même de s'engager dans l'énumération des droits fondamentaux qu'elle professe, la *Déclaration universelle des droits de l'Homme* du 18 septembre 1948 prêterait à controverse. D'emblée, l'Assemblée générale proclame la Déclaration "comme l'idéal *commun* à atteindre par *tous* les peuples et *toutes* les nations." Cela donne à comprendre que la Déclaration reconnaît à tout être humain un ensemble de dénominateurs existentiels.[60] Abstraction faite des particularismes culturels, économiques ou autres, les droits fondamentaux seraient par définition innés, concommitants à l'Homme *qua* Homme.

En contrepoint, des auteurs tout aussi bien intentionnés arguent que "the very existence of that nature is not universally recognized."[61] À sa brillante analyse du sujet, R.C. Pandeya conclut que l'*idéal commun* de la Déclaration

> has a strange sound in Indian ears, not only because such a common standard does not exist in our present-day world but also because you cannot give the same set of rights to both those who work for it and those who do not work. People whose conduct and position are not effective enough to lead them to such an achievement would also invoke these rights merely in the name of their humanity. This would in effect give rise to misplaced and undeserved expectations leading ultimately to perpetual tension in a society. If you tell an Indian, who is alive to the Indian tradition, that he has certain rights by virtue of his being a man, he would laugh at you.[62]

Il vaut mieux ne pas glisser ici vers un débat carrément philosophique. Nous avons déjà consacré quelques lignes aux notions théoriques de droits et devoirs qui précèdent celles de droits fondamentaux. En outre, comme le rappelle Vincent, "abstactness is perhaps the central difficulty with the theory of human rights. It is a feature of the theory which threatens to drive human rights out of the political world altogether."[63] Autant alors, à ce stade-ci de la présente étude, jeter un regard positiviste sur deux aspects palpables des documents internationaux des droits de la personne et qui cadrent avec une perspective tiers-mondiste.

3.1 L'inflation quantitative

Les actes internationaux ont foisonné et avec eux les droits fondamentaux. La Déclaration universelle a enfanté des générations ou catégories de droit. Les deux premières catégories ont pris forme conventionnelle le 16 décembre 1966 par l'adoption simultanée des *Pacte international relatif aux droits civils et politiques* et *Pacte international relatif aux droits économiques, sociaux et culturels*.[64] La conception des droits civils et politiques aurait précédé chronologiquement celle des droits économiques, sociaux et culturels. Quoiqu'il en fut, chacune de ces premières générations répondit aux desiderata respectifs et prépondérants des pôles géopolitiques sis à Washington et Moscou.[65]

La cohabitation du couple de *Pactes* n'alla pas sans friction. Aussi récemment que le 13 décembre 1985, une résolution relative à l'indivisibilité et l'interdépendance des droits économiques, sociaux, civils et politiques, clivaient la communauté internationale dans le sens de ses affinités idéologiques.[66] Les PVD avaient appris les règles du jeu et commençaient à imprimer aux documents internationaux leur propre version des droits fondamentaux. En 1986, le péruvien Ferrero, rapporteur spécial de la Sous-commission de la lutte contre les mesures discriminatoires et de la protection des minorités, des Nations Unies, soulignait

> le caractère indivisible et interdépendant de tous les droits de l'homme, sans donner de priorité à telle catégorie. Le plus difficile [de poursuivre le rapporteur général] est non pas de régler la question de la priorité, mais d'établir une relation souple entre les deux catégories de droit et de tenir le plus grand compte du niveau de développement social et économique de chaque pays; pour ce faire, il faut comprendre que l'exercice des droits économiques, sociaux et culturels *dépend largement du niveau de développement de chaque État*, tandis que celui des droits civils et politiques *dépend exclusivement de la volonté politique des gouvernements*.[67]

La persistance à loger les droits fondamentaux en terrain politique et international permit ultimement aux PVD de récupérer à leur compte le discours relatif à ces droits puis d'en prendre l'initiative. Un patient processus entamé une quinzaine d'années auparavant[68] déboucha récemment sur le droit au développement, droit de l'Homme. Le 4 décembre 1986, l'Assemblée générale adoptait la *Déclaration sur le droit au développement*,[69] lui reconnaissant en son article premier explicitement la qualité de *droit de l'Homme*. La controverse a cours sur la propriété *fondamentale*[70] du droit au développement tout comme, plus essentiellement, sur l'attribution du statut de *droit*,[71] même secondaire, au phénomène du développement. Chose sûre le droit fondamental au développement jouit désormais d'une reconnaissance internationale formelle et analogue à celle accordée aux droits de même acabit.

Quelques experts ont profité de l'éclosion du droit fondamental au développement pour attirer l'attention des milieux intéressés sur l'inflation quantitative des droits de la personne.[72] Il est dommage que cetter mise en garde ait coïncidé avec la naissance de la troisième génération des droits fondamentaux, qui, paradoxalement, aurait dû être édictée durant la genèse des droits de la personne. Au surplus, un climat inflationniste régnait déjà dès les premiers instants de la *Déclaration universelle* de 1948, comme en attestent certaines de ses dispositions.

Exemple probant, le premier paragraphe de l'article 23 prévoyant que "toute personne a droit au travail, au libre choix de son travail, à des conditions équitables et satisfaisantes de travail et à la protection contre le chômage." L'introduction, à côté des droits à la vie, à la liberté et à la sûreté de la personne, du droit à la protection contre le chômage pouvait, séance tenante, laisser songeur l'observateur apolitique, surtout celui provenant d'un PVD. Le vocable "chômer," en français, origine du XIII siècle où il signifiait "suspendre son travail pendant les jours fériés." Chômer, dans le sens où l'entend l'article 23, ne surgit qu'avec l'avènement de la société industrielle: "cesser le travail par manque d'ouvrage." La venue du mot "chômeur" tarde jusqu'à 1876.[73] En 1948, encore traumatisé par la crise économique de l'entre-guerre, on fait du chômage un malaise contre lequel tout être humain a droit de protection. S'il était louable pour l'Occident de vouloir, par anticipation, prémunir l'humanité contre les maux attribuables à l'industrialisation,[74] il n'était peut-être pas sage en revanche d'élire un véhicule aussi vénérable que la *Déclaration universelle* proclamant du même souffle le caractère sacré de la vie et d'autres valeurs inviolables.

Pareille prodigalité, telle une inflation, provoqua la dépréciation générale des droits fondamentaux, particulièrement auprès des sociétés sous-développées pour qui, au départ, les droits (*rights*), le droit (*law*) et le principe de la légalité demeuraient étrangers. Car il leur aurait fallu comprendre—pour donner une autre illustration—que le droit à l'éducation,[75] si universel soit-il, ne possède pas un caractère aussi liminaire que la droit à la vie. Surcharger la *Déclaration universelle* et tant d'actes internationaux postérieurs entraîna indistinctement l'allègement disproportionné des droits qu'ils embrassent.[76] Et le 4 décembre 1986, question de rallier des intérêts politiques réticents, on nivela les droits fondamentaux civils, politiques, économiques, sociaux et culturels en les déclarant indivisibles, interdépendants et d'égale importance. Trois catégories en une seule; une sainte trinité.

3.2 La relativité des civilisations

La majorité des actes internationaux relatifs aux droits fondamentaux démontre l'utilité et, à l'occasion, la nécessité d'y garder suffisamment de marges idéologiques pour permettre un minimum de convergence parmi des vecteurs politiques à première vue conflictuels. On ne peut par contre déceler là une réceptivité comparable au pluralisme des civilisations. Non pas qu'il ait mieux valu incorporer aux instruments internationaux déjà longs, d'interminables énumérations de droits d'un caractère plus ou moins régional, accentuant ainsi la méprise de l'accessoire et du principal. Il aurait peut-être fallu à l'inverse chercher à économiser les droits et n'en promouvoir que les éléments cruciaux, les moins susceptibles d'incompatibilité culturelle afin de réduire ou éviter d'aggraver ce que Mazrui qualifie de "international stratification" et de "culture of 'us' and 'them'."[77]

Les droits fondamentaux, reconnait-on sans ambage,[78] ont évolué dans le temps. Ils accompagnent l'Histoire et cristalisent les valeurs d'une époque. Aujourd'hui, rien ne nous autorise à croire que l'émergence récente de la troisième génération de droits fondamentaux ait épuisé leurs métamorphoses. Il semble à l'opposé y avoir plus de réticences manifestes à ce que les droits de l'Homme puissent aussi varier dans l'espace, entre civilisations ou cultures contemporaines les unes des autres. On voudrait apparemment que l'application et la mise en oeuvre des droits s'ajustent aux circonstances d'un lieu géographique sans que, de concert, la quintessence des droits ne bouge. Un simple coup d'oeil empirique sur une mappemonde peut pourtant nous instruire de la précarité *conceptuelle* de certains droits fondamentaux.

En exemple, l'énoncé de l'article 16 de la *Déclaration universelle* voulant que "à partir de l'âge nubile, l'homme et la femme [. . .] ont le droit de se marier et de fonder une famille,"[79] et qui percute de plein fouet les efforts légitimes déployés par l'État pour freiner la marée démographique qui envahit la République populaire de Chine. Un millard deux cent millions de citoyens chinois ont-ils le droit *fondamental, dès l'âge nubile*, de se marier et de fonder une famille? L'interrogation ne vise pas les modalités de mise en oeuvre de ce droit ni son interprétation mais bien, précisément, l'universalité de son principe moteur. La référence au spectaculaire cas chinois n'a pas non plus pour objet de mettre en exergue un scénario extrême pouvant justifier certaines atteintes circonstanciées à un droit déclaré fondamental. Elle prend plutôt pour cible ce droit même, ainsi qu'il est prononcé par les actes internationaux, sans égard au prix et aux conséquences matérielles de son respect absolu ou imparfait.

Et comment, dans la même foulée, peut-on concilier la seconde phrase de l'article 16—"[l'homme et la femme] ont des droits *égaux*[80] au regard du mariage, durant le mariage et lors de sa dissolution"—

avec l'article 35 du *Coutumier du Dahomey*, reflet fidèle de moeurs persistantes[81] et encore de nos jours sanctionnées par les tribunaux nationaux, qui se lit comme suit: "Dans toutes les coutumes (sauf la mina et la somba) la première femme [épouse] a une place particulière, dirige le travail des autres femmes [épouses] qui lui doivent le respect."[82] Ces dernières sont égales entre elles?

Sauf à prétendre comme le fait Vincent que "we have to recognize that conceptions of human rights do vary with culture,"[83] nous opinons que les actes internationaux entremêlent aux droits fondamentaux des droits complémentaires, au préjudice des premiers. Les PVD ne parviennent pas aisément à partager les droits fondamentaux des droits complémentaires, tous réunis dans les mêmes actes internationaux sans mise en garde de la part de leurs auteurs occidentaux. Troublés par l'antagonisme de certains droits complémentaires envers leurs valeurs culturelles, les PVD versent dans une confusion qui leur obscurcit jusqu'à l'universalité et la supériorité hiérarchique[84] des droits véritablement fondamentaux. Bref le relativisme historique des droits de l'Homme pourrait se doubler d'un relativisme culturel (géographique) qui siérait mieux PVD, tout en épargnant les droits essentiels.

Conclusion

Survoler en une trentaine de pages les vastes instruments internationaux sur les droits de la personne pour tenter d'en révéler l'inadéquation aux fins des relations bilatérales avec les PVD, comporte des risques. Primo, d'égratigner fortuitement ces monuments d'humanisme. Secundo, d'être perçu comme courant à la défense des violateurs des droits fondamentaux ou leur marquant quelque symphathie. Enfin, de faillir à la tâche ambitieuse de soumettre des solutions de rechange.

Une critique de l'armature *juridique* de la *Charte internationale des droits de l'Homme* doit laisser intacte, dans la mesure du possible, la substance *morale* qui justifie les droits. C'est bien en vertu de son extrême valeur intrinsèque que la vie vint à constituer un droit fondamental, et non l'inverse. Qu'importerait le *droit* à la vie des Martiens si la *vie* était sacrée et effectivement respectée sur Mars. Mais lorsqu'en une société sous-développée X, le pouvoir tue lâchement un individu, le droit, la primauté du droit et les droits fondamentaux rédigés par les sociétés Y et Z restent hélas des outils inadéquats entre leurs mains pour modifier les valeurs et les comportements du pouvoir chez la société X qui, de toute façon, avait auparavant minutieusement inscrit ce vocabulaire dans sa Constitution et apposé sa signature au bas des documents internationaux protégeant cet individu.

Donner partiellement raison aux PVD de ne pas s'y reconnaître dans les instruments internationaux des droits de la personne ne les absout guère des crimes perpétrés par eux en violation de valeurs morales universelles, telle l'intégrité physique. Sous toutes les latitudes la torture demeure un répugant délit contre l'humanité. Cependant, l'antidote à court terme, comme mentionné au paragraphe précédent, ne sera pas une médecine juridique conconctée hors du contexte délictuel.

Le Canada, puissance intermédiaire engagée dans l'aide bilatérale aux PVD, doit certes mettre ses richesses au service de la noble cause des droits humains. Bâtir à partir des actes internationaux son propre code déontologique pour l'appliquer aux PVD nous paraît cependant une avenue peu prometteuse. Au moins deux autres voies, insuffisamment explorées, s'offrent au Canada.

À la tribune des forums politiques internationaux, le Canada peut inviter la communauté des nations à promptement inscrire à son agenda la réforme des droits fondamentaux universels, avant que le nombre et la disparité n'en emportent irréversiblement la caducité. Le Canada constitue providentiellement, pour PVD et nations industrialisées conjointement, un rare interlocuteur crédible et habile à créer un *momentum* propice à la réforme puis à en inspirer la démarche.

En jetant les bases du nouveau *Centre international pour les droits humains et le développement démocratique*,[85] le Canada a peut-être déjà emprunté une seconde avenue aussi encourageante. Notre pays doit assumer un plus fort leadership dans la recherche et la diffusion de la pensée en matière de valeurs et droits fondamentaux. La création du *Centre* marque un pas dans cette direction et pourrait exaucer les prières réitérées de nombreux commentateurs qui souhaitent l'étude des "relationships between rights and cultural systems,"[86] des "philosophical and political beliefs, and the qualitative aspects of national and human development"[87] et des "mechanisms through which the relationship between [legal] ideas and [political] reality is established."[88]

L'aide aux PVD, comme le commerce extérieur, constitue un avantageux médium pour la communication des inquiétudes des Canadiens devant l'irrespect des droits fondamentaux dans le monde. Mais la force persuasive du message, si elle ne peut être entièrement détachée du médium, dépend en premier ressort de son contenu.

Notes

1. Le 16 mars 1977, le secrétaire d'État aux Affaires extérieures, M. Don Jamieson, pouvait encore déclarer: "Il est fort difficile d'entreprendre une action au niveau économique: si nous outre-

passons les sanctions prévues par la communauté internationale, où allons-nous nous arrêter? Et si nous adoptons des mesures unilatérales et qu'elles s'avèrent vaines, qu'y aurons-nous gagné? En fait, les sanctions internationales sont, à nos yeux, les seules mesures vraiment sensées et efficaces que nous puissions prendre à l'encontre des régimes répressifs." Allocution prononcée à l'occasion d'un séminaire tenu sous les auspices du Conseil canadien des Églises et du Conseil canadien des évêques catholiques, à Ottawa, et dont le texte est reproduit dans *Les droits de la personne et la politique étrangère du Canada*, Affaires extérieures, Canada, janvier 1988.

Le 31 octobre de la même année, le député David MacDonald présenta à la Chambre des communes le *Projet de loi* C-204 intitulé *"Loi prohibant l'attribution d'aide aux pays étrangers qui violent les droits de l'homme"* (Troisième Session, Trentième Législature, 26 Elizabeth II, 1977). Le *Projet de loi* connut la défaite en première lecture.

2. Discours de M. Mark MacGuigan, secrétaire d'État aux Affaires extérieures, à la réunion annuelle de la Section canadienne de la Commission internationale des juristes, à Toronto, le 31 août, reproduit dans *Les droits de la personne et la politique étrangère du Canada, ibid.*

3. Allocution du très honorable Joe Clark, secrétaire d'État aux Affaires extérieures, à la Conférence annuelle sur les droits de la personne et la politique étrangère, Fondation canadienne des droits de la personne, le 21 mars 1986, reproduit dans *Les droits de la personne et la politique étrangère du Canada, ibid.*

4. Agence canadienne de développement international, *Partageons notre avenir—L'assistance canadienne au développement international*, Ottawa, 1987, 31. L'ACDI précise: "Mais la promotion des droits de la personne pose des problèmes épineux. Il faut éliminer de nombreux obstacles à la compéhension internationale, dont les différences culturelles, avant d'être en mesure de s'attaquer effectivement à certains de ces problèmes," *ibid.*

5. Comité permanent des Affaires extérieures et du commerce extérieur, *Qui doit en profiter?* (Rapport sur les politiques et programmes du Canada en matière d'aide publique au développement), Ottawa, mai 1987, 33 à la recommandation 1.

6. Paula R. Newberg n'écrivait-elle pas, au début de la décennie, que "Writing about human rights, although an intractable task, has become a minor growth industry in the last several years"?;

"Introduction: Dimensions of the Problem" dans Paula R. Newberg éd., *The Politics of Human Rights*, UNA-USA Book, 1980, 1 à la p. 5.

7. Robert Carty et Virginia Smith, *Perpetuating Poverty. The Political Economy of Canadian Foreign Aid*, Between The Lines, Toronto, 1981, 175-78; Margaret Doxey, *Human Rights and Canadian Foreign Policy*, Canadian Institute of International Affairs/Institut canadien des Affaires internationales, Vol. 37, No. 4, 1979, 16-17; John W. Foster, "Canadian National Policy, Human Rights and International Financial Institutions: A Time of Opportunity" notes for an address to the Conference on the global impact of the IMF–World Bank, University of Toronto, 8 September 1982, 14; The Group of 78/Le groupe des 78, *To Combine Our Efforts . . .* (A statement on Canadian Foreign Policy), Stoney Lake, Ontario, September 1985, 7; Jack Donnelly et Rhoda E. Howard, *International Handbook of Human Rights*, Greenwood Press, 1987, 14; T.A. Keenleyside et Patricia Taylor, *The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma*, Canadian Institute of International Affairs/Institut canadien des Affaires internationales, Vol. 42, No.2, 1984, 6; T.A.Keenleyside, "Canadian Aid and Human Rights: Forging a Link" dans le présent ouvrage, aux pp. 329 et s.; Robert Matthews et Cranford Pratt, "Human Rights and Foreign Policy: Principles and Canadian Practice" (1985) 7 *Human Rights Quarterly*, 159 à la p. 184.

8. *Qui doit en profiter?*, *supra*, note 5.

9. Agence canadienne de développement international, *L'assistance canadienne au développement international—Pour bâtir un monde meilleur* (Réponse du Gouvernement du Canada au rapport du Comité permanent des Affaires étrangères et du Commerce extérieur) Ottawa, septembre 1987, 56.

10. *Ibid.*, aux pp. 56-57; nous avons ajouté les italiques.

11. *Ibid.*

12. Organisation des Nations Unies, *Droit de l'Homme—Recueil d'instruments internationaux*, N.-Y., 1988.

13. Émile Durkheim, "Types of Law in Relation to Types of Social Solidarity" dans Vilhem Aubert éd., *Sociology of Law*, Londres, Penguin Books, 1975, 17; Robert Samek, *The Legal Point of View*, N.-Y., Philosophical Library, 1974, aux pp. 208 et s.

14. *Déclaration universelle des droits de l'Homme*, Résolution 217A (III) de l'Assemblée générale, le 10 décembre 1948, premier Considérant.

15. Il n'est pas de notre intention de distinguer entre "droits de l'Homme", "droits fondamentaux" et "droits de la personne"; nous utiliserons indifféremment ces trois expressions bien que la dernière soit d'un usage plus courant en droit canadien.

16. Le *Pacte international relatif aux droits économiques, sociaux et culturels* (Résolution 2200 A (XXI) de l'Assemble générale, du 16 décembre 1966) et le *Pacte international relatif aux droits civils et politiques* (*ibid.*) prennent tous deux en considération "le fait que l'individu a des *devoirs* envers autrui et envers la collectivité à laquelle il appartient et est tenu de promouvoir et de respecter les droits reconnus dans le[s] présent[s] Pacte[s]"; (nous avons ajouté les italiques).

17. Expression utilisée dans la version anglaise de la *Déclaration universelle*. Le sixième Considérant de la *Déclaration universelle, supra*, note 14, dispose ensuite "que les États Membres se sont engagés à assurer, en coopération avec l'Organisation des Nations Unies, le respect universel et effectif des droits de l'homme et des libertés fondamentales."

18. Des points économiques, aux dires de Francisco Miro Quesada: "It is [. . .] clear that the West used a liberal and democratic ideology, proclaiming respect for human rights, in order to justify economic penetration"; "Human Rights in Latin America" dans *Philosophical Foundations of Human Rights*, UNESCO, 1986, 303 à la p. 310.

19. "The *conceptual language* in which the Universal Declaration of 1948 and at least the preambles to the Covenants of 1966 are expressed is derived directly from the philosophies of law produced by the intellectual revolution in Europe in the seventeenth century with Grotius and Locke, developed in the eighteenth century by the *Encyclopédistes*, Montesquieu and Rousseau, followed by Kant and taking yet another dimension with philosophical utilitarianism. According to this tradition of thought, the power of decision belongs by right to the individual without being conceded to or bestowed upon him. In this sense, the sovereignty of the individual precedes that of society organized as a state, a precedence which in certain philosophies is taken literally"; Paul Ricoeur,"Introduction" dans *Philosophical Foundations of Human Rights*, *ibid.*, 9 à la p. 11.

20. En exemple, "in classical Sanskrit there is no word meaning 'rights' in our contemporary sense. In all contexts the idea of 'just claim' is expressed through the word *adhikara* [which] suggests that the person has either performed some *dharma* (prescribed duty) or has come to possess some thing, value or status"; R.C. Pandeya, "Human rights: an Indian perspective" dans *Philosophical Foundations of Human Rights, ibid.*, à la p. 267. En 1821 dans ses *Principes de la philosophie du droit* (Paris, Gallimard, 1966, 372) Friedrich Hegel avait noté que dans la conception orientale "le gouvernement du monde est une théocratie, le chef est un prêtre suprême ou bien un Dieu, la constitution et la législation sont de la religion, de même que les commandements religieux et moraux ou plutôt les usages, sont des lois juridiques garanties par l'État. Dans l'éclat de ce tout, la personnalité individuelle disparaît sans droits, la nature est immédiatement divine, ou bien un ornement de Dieu, et l'histoire de la réalité est poésie."

21. Paulin J. Hountondji, "The Master's Voice—Remarks on the Problem of Human Rights in Africa" dans *Philosophical Foundations of Human Rights, ibid.*, 319 à la p. 321. Au même effet M. Keba M'baye, "Les droits de l'homme dans les pays en voie de développement" (1983) 1 *Canadian Human Rights Yearbook/ Annuaire canadien des droits de la personne*, 73 à la p. 85.

22. Paulin J. Hountondji, *ibid.* R.J. Vincent appuie le fait que "what we now call human rights were not invented but discovered" (*Human Rights in International Relations*, Cambridge University Press, 1986, 19). Rhoda E. Howard indique pour sa part que "Rights were not an issue at all during the period of industrialization of Western Europe and North America" (*Human Rights, Development and Foreign Policy*, paper prepared for a conference on Human Rights and Development, sponsored by the International Political Science Association, The Hague, June 1, 1987, à la p.2).

23. R.C. Pandeya nous apprend que "in the Indian way of thinking rights always follow, but never precede, duties .... Article 29 [of the *Declaration*] clearly states: 'Everyone has duties to the community in which alone the free and full development of his personality is possible.' As an Indian I would take this to be the guiding first principle of the Declaration and would like to see all the other articles subordinated to this one"; *supra*, note 20, aux pp. 271 et 274.

24. R.J. Vincent, *supra*, note 22, à la p. 7.

25. Johan Gatlung, "What Kind of Development and What Kind of Law" dans International Commission of Jurists, *Development, Human Rights and the Rule of Law*, Pergamon Press, 1981, 121 à la p. 125.

26. R.C. Pandeya, *supra*, note 20, 269. Francisco Miro Quesada explique le même phénomène dans la phrase suivante: "Legal ideas reflect the economic, political, philosophical, social and cultural ideas which serve to determine the course of actual society"; *supra*, note 18 à la p. 307.

27. Vittorio Mathieu, "Prolegomena to Study of Human Rights from the Standpoint of the International Community" dans *Philosophical Foundations of Human Rights*, *supra*, note 18, 33 à la p. 36.

28. R.J. Vincent, *supra*, note 22 à la p. 89; il a écrit plus tôt que "The idea of rights is connected to that of political individualism" (*ibid.* à la p. 17).

29. M. Keba M'baye, *supra*, note 21 à la p. 83; "En Afrique, l'individu se confond avec l'archétype du totem, de l'ancêtre commun ou du génie protecteur" (*ibid.* à la p. 85); voir aussi L. Marasinghe, "Traditional Conceptions of Human Rights in Africa" dans Claude F. Welch et Ronald I. Meltzer éd., *Human Rights and Development in Africa*, State University of N.-Y. Press, 1984, aux pp. 32 et ss., et Jack Donnelly, "The Right to Development: How Not to Link Human Rights and Development", *ibid.* 261 à la p. 269.

30. Rhoda E. Howard, "Civil/Political Rights and Canadian Development Assistance" dans le présent ouvrage, aux pp. 355 et s. La professeure Howard y affirme: "attempts by the Canadian government to assist in the implementation of the rule of law in underdeveloped countries are highly commendable; and they are certainly not merely the interfering export of Canadian institutions" (*ibid.* à la p. 363).

31. Il s'agit plutôt de droits socio-économiques qui impriment une autre allure au principe de la légalité, particulièrement dans les régimes marxistes où les pouvoirs législatifs et exécutifs connaissent moins le contrôle du pouvoir judiciaire; voir à ce sujet V.N. Kudryavtsev, "Human Rights and the Soviet Constitution" dans *Philosophical Foundations of Human Rights*, *supra*, note 18 à la p. 83. Voir aussi Maria Hirszowicz, "The Marxist Approach

to Human Rights" dans *Human Rights Teaching*, UNESCO, Vol. IV, 1985, 56.

32. Philip Alston, "Prevention Versus Cure as Human Rights Strategy" dans *Development, Human Rights and the Rule of Law*, *supra*, note 25, 31 à la p. 69; et dans le même ouvrage, le "Summary of Discussions and Conclusions" (p. 223) particulièrement au paragraphe 7 (p. 224).

33. M. Keba M'baye, *supra*, note 21 à la p. 77.

34. Voir Margaret Doxey, *supra*, note 7 à la p. 7.

35. Ramon P. Diaz, "Capitalism and Freedom in Latin America", dans *Freedom, Democracy and Economic Welfare*, Fraser Institute, Vancouver, 1988, 245 à la p. 252. Diaz ajoute: "Development theorists err when they indulge in so much hand wringing before some economies' inability to grow. They should concentrate on the handful of countries that succeeded in establishing the institutional structure that we call the rule of law, after which material prosperity flowed naturally in, and inquire, day in and day out, how on earth they achieved that unbelievable wonder—to constrain those in power, those who wield the sword, to act within the prescriptions of abstract law, and set them to abide, while in bright uniforms and on horseback, by the rulings of old men in black robes" (p. 259).

36. Francisco Miro Quesada, *supra*, note 18 aux pp. 305-06.

37. Ce qui semble être le sombre destin des pays latino américains. Luis Pasara souligne "the small differences between civil and military regimes in Latin America. Both have used—and are ready to use—repression to the extent needed to hide the largely non-achieved popular demands"; "Human Rights and Development: A Difficult Relationship" dans *Development, Human Rights and the Rule of Law, supra*, note 25, 181 à la p. 185. Voir également Jean-Denis Archambault, "La violation des droits fondamentaux et la responsabilité civile de la Nation colombienne: L'étatisation de la violence" (1987) 4 *Canadian Human Rights Yearbook/Annuaire canadien des droits de la personne*, 3-64.

38. Ce qui peut expliquer la répulsion du citoyen envers les lois, comme en certains pays: "It is common knowledge . . . that the majority of Kenyan citizens want nothing to do with official law"; Clarence J. Dias, "Realizing the Right to Development: The

Importance of Legal Resources" dans *Development, Human Rights and the Rule of Law*, *supra*, note 25, 187 à la p. 193.

39. Richard A. Falk, "Theoretical Foundations of Human Rights" dans Paula R. Newberg éd., *supra*, note 6, 65.

40. Raul Ferrero, *Le nouvel ordre économique international et la protection des droits de l'homme*, Nations Unies, N.-Y., 1986, 23: "l'existence d'une sécurité juridique adéquate [doit être] appuyée par un nombre suffisant de cadres juridiques convenablement formés [et] la formation du personnel spécialisé qu'exigent ces fonctions." Clarence J. Dias, *supra*, note 38, à la p. 192, estime quant à lui que "Lawyers and jurists in third world countries can thus help replace laws." Philip Alston, *supra*, note 32, à la p. 69, va plus loin en prêchant que "Lawyers should refuse to collaborate with any authority in any action which violates the Rule of Law."

41. Nous paraît donc un peu hâtive l'affirmation de R.J. Vincent, *supra*, note 22, à la p. 12, à l'effet que "Establishing the right to life merely requires legislation against murder."

42. Le paragraphe de proclamation ainsi que les articles 13, 16 par. 3 et 30.

43. *Supra*, note 16.

44. Proposition que la professeure Rhoda E. Howard a exposée: "The Universal Declaration is nearly universally accepted by states. For practical political purposes we can treat it as authoritative . . . As such it has no force of law . . . at the international level there are comprehensive, authoritative human norms that are widely accepted as binding on all states"; *supra*, note 22, 6 aux pp. 7 et 10.

45. Friedrich Hegel, *supra*, note 20, à la p. 275, expliquait: "L'idée de l'État: a) Possède une existence immédiate et est l'État individuel comme organique se rapportant à soi-même—c'est la constitution du droit politique interne. b) Elle passe à la relation de l'État isolé avec les autres États—c'est le droit externe."

46. Georges Burdeau, *L'État*, Éditions du Seuil, Paris, 1970, 21. Il écrit à la p. 12 : "Les hommes ont inventé l'État pour ne pas obéir aux hommes . . . Sa raison d'être première est de fournir à l'esprit une représentation de l'assise du Pouvoir qui autorise à fonder la différenciation entre gouvernants et gouvernés sur une autre base que des rapports de force."

47. *Ibid.* aux pp. 60-61.

48. Le professeur Burdeau situe ainsi la souveraineté: "qualité politique qui résulte d'un ensemble de circonstances historiques ayant donné naissance à un certain équilibre des forces en présence dans le corps social, tandis que la puissance d'État, directement rattachée à l'idée de droit, est la figure juridique des énergies qu'elle contient" (*ibid.* 70).

49. Exemple: M. Paraiso, "La protection des libertés en République populaire du Bénin" (1988) 65 *Revue de droit international et de droit comparé*, 55-75.

50. "[Le] droit constitutionnel en Amérique du Sud révèle l'existence d'une tension ostensible entre la règle de droit et la réalité sociale et institutionnelle. À la base de cette tension, l'on retrouve deux traits d'instabilité étroitement liés, d'une part les inégalités aigües quant aux niveaux de revenus par habitant et, d'autre part, les interventions militaires avec violation des droits de l'homme"; R. Segal, M. Pinto et C.E. Colautti, "Aperçu sur les systèmes juridiques de l'Amérique du Sud" (1988) 65 *Revue de droit international et de droit comparé*, 105 à la p. 123.

51. Georges Burdeau, *supra*, note 46 à la p. 37.

52. Presque tous les pays sud-américains éprouvent d'ennuyeux différends relatifs aux délimitations frontalières, terrestres et maritimes, de leur territoire; Ramon P. Diaz, *supra*, note 35 à la p. 256.

53. "Africa is a patchwork of perhaps 1,000 distinct ethnic groups . . . The European statemen who parcelled out the continent over port and cigars in the great Berlin conference of 1884 paid little attention to such trifles"; "Africa's Heart of Darkness" *The Economist* (Londres), 27 août 1988, 29.

54. On rapporte, depuis le 14 août 1988, des milliers de victimes de cette guerre tribale; Jonathan Manthorpe, "Burundi Atrocities Reveal Canada's Hypocrisy" *Ottawa Citizen*, 27 août 1988, B-5 et Patrick Moser, "Punishment by West Could Help Escalate Violence in Burundi" *Ottawa Citizen*, 3 septembre 1988, B-7.

55. Imprimerie du Parti Uprona, Bujumbura, 1981, art. 10 et 11.

56. Glen C. Dealy, "La Resistencia al Pluralismo en America Latina", (1986) 2 *Ciencia Politica* 98 (traduit de *Foreign Policy*, été, 1985-86).

57. Ce que Robert Matthews et Cranford Pratt, *supra*, note 7, à la p. 16, ont pris en considération lorsqu'ils écrivent: "The objectives of well-intended and major efforts to interfere in the internal affairs of another state are only achievable by social and political forces internal to the society. Reforms which are the consequence of external pressure will not last unless substantial support for them has already been mobilized within the country. Moreover, the very fact that this pressure comes from outside may often create added obstacles to the success of the reforms in question."

58. Rhoda E. Howard, *supra*, note 22, aux pp. 15-23, retient des signes extérieurs comme l'urbanisation, l'alphabétisation, les media d'information, la spécialisation des tâches, etc. Elle écrit aussi: "All societies are now state societies and all human beings are subject to the authority of one or another state," *supra*, note 30, à la p. 356.

59. R.J. Vincent, *supra*, note 22, 123 (nous avons ajouté les italiques).

60. Rhoda E. Howard, *supra*, note 22, à la p. 1 écrit: "Human rights can be defined briefly as the rights one has simply because one is a human being." Dans le même sens, R.J. Vincent, *ibid.* 9-11.

61. Vittorio Mathieu, *supra*, note 27, 34.

62. R.C. Pandeya, *supra*, note 20, 270.

63. R.J. Vincent, *supra*, note 22, 35.

64. *Supra*, note 16.

65. "Il est indéniable que l'établissement d'un lien entre les questions économiques et les droits de l'homme est à porter au crédit de la doctrine marxiste qui a triomphé au début du siècle, tout comme la reconnaissance des droits civils et politiques s'inscrit dans le sillage de l'indépendance des États-Unis d'Amérique et de la Révolution française de la fin du XVIII^e siècle"; Raul Ferrero, *supra*, note 40, 18.

66. Le résultat du vote se répartit comme suit: 1 contre, les États-Unis d'Amérique; 19 abstentions: Australie, Belgique, Canada, Danemark, Finlande, France, République fédérale Allemande, Grenade, Islande, Israël, Italie, Japon, Luxembourg, Malawi, Norvège, Portugal, St-Christophe et Nevis, Royaume-Uni et Suède; et 134 États, qu'il serait trop long d'énumérer, furent favorables à la résolution. Ces 134 États, on l'aura compris à la lecture de la liste des 19 États s'étant abstenu, faisaient corps.

67. Raul Ferrero, *supra*, note 40, 17 (nous avons ajouté les italiques). Voir à ce sujet Rhoda E. Howard, "The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidences from Sub-Saharan Africa" (1983) 5 *Human Rights Quarterly*, 467.

68. M. Keba M'baye, "Le droit au développement comme un droit de l'homme" (1972) 5 *Revue des droits de l'homme*, 505; pour une autre contribution importante à ce sujet, voir Hector Gross Espiell, "The Right of Development as a Human Right" (1981) 16 *Texas International Law Journal*, 189.

69. Résolution 41/128.

70. Voir Jack Donnelly, *supra*, note 29, et du même auteur "In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development", ainsi que les répliques auxquelles il a donné lieu, (1985) 15 *California Western International Law Journal*, 473 et ss.; également Ved P. Nanda, "The Right to Development Under International Law—Challenges Ahead", *ibid.* à la p. 431.

71. Louis Henkin, "International Human Rights as 'Rights' " dans J. Roland Pennock et John W. Chapman, *Human Rights*, Series Nomos XXIII, 1981, 257.

72. Karel de Vey Mestdagh, par exemple, avait en vain prévenu de ce danger: "It should be made absolutely clear that the international community has no need for new human rights, especially in the context of development"; "The Right to Development: From Evolving Principle to 'Legal' Right: In Search of its Substance" dans *Development, Human Rights and Rule of Law*, *supra*, note 25, 143 à la p. 167.

73. Paul Robert, *Dictionnaire alphabétique et analogique de la langue française*, Le Robert, Paris, 1981, 309.

74. "There are societies even today where the practice of employment in our sense of the term is totally unknown"; R.C. Pandeya, *supra*, note 20, 270.

75. "Toute personne a droit à l'éducation. L'éducation doit être gratuite, au moins en ce qui concerne l'enseignement élémentaire et fondamental. L'enseignement élémentaire est obligatoire. L'enseignement technique et professionnel doit être généralisé; l'accès aux études supérieures doit être ouvert en pleine égalité à tous en fonction de leur mérite."

76. Voir la remarquable étude de Jeanne Hersch, "Human Rights in Western Thought: Conflicting Dimensions" dans *Philosophical Foundations of Human Rights*, *supra*, note 18, 131. Elle y décrit ce que, dans son "Introduction", Paul Ricoeur appelle "an endless proliferation of rights . . . the illusion that happiness for all or eternal peace can be rights," *ibid.* à la p. 19. R.J. Vincent, *supra*, note 22, à la p. 13, exprime le même souci lorsqu'il souhaite que "Human rights . . . be restricted to things that are supremely sacred."

77. Ali A. Mazrui, "Human Rights and the Moving Frontier of World Culture" dans *Philosophical Foundations of Human Rights*, *supra*, note 18, 243 à la p. 263. Mazrui élabore sa pensée: "civilizations which anthropomorphized God in monarchical terms, and made him one God for all mankind, had a strong propensity to divide the world between God-fearing people and sinners . . . differenciating supporters from adversaries. Human rights are caught in between" *ibid.*

78. Rhoda E. Howard et Jack Donnelly, "Introduction" dans *International Handbook of Human Rights*, *supra*, note 7, 1 à la p. 5.

79. Texte repris intégralement à l'art. 23 du *Pacte international relatif aux droits civils et politiques*, *supra*, note 16.

80. Nous avons ajouté les italiques.

81. Ainsi que l'a compris R.C. Pandeya, *supra*, note 23, à la p. 269, "People living in remote parts of Africa would . . . have an entirely different notion of equality."

82. L'article de loi continuait: "sauf chez les baribas, les dendis et les mokollés où les descendantes d'anciens esclaves viennent après les femmes d'origine libre. Mais cette exception disparaîtra avec la mort des dernières descendantes d'esclaves"; Gouvernement général de l'Afrique occidentale française, Colonie du Dahomey, *Coutumier du Dahomey*, (Circulaire A.P. 128 du 19 mars 1931) Imprimerie du gouvernement, Porto-Novo, 1933, 9.

83. R.J. Vincent, *supra*, note 22, 55.

84. Voir Jack Donnelly, "Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights" (1982) 76 *American Political Science Review*, 303; et Theodore Meron, "On a Hierarchy of International Human Rights" (1986) 80 *American Journal of International Law*, 1.

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85. Selon la recommandation des rapporteurs spéciaux Gisèle Côté-Harper et John Courtney, *Coopération internationale pour le développement des droits humains et des institutions démocratiques/International Cooperation for Development of Human Rights and Democratic Institutions*, 30 juin 1987.

86. Paula R. Newberg, *supra*, note 6, 7.

87. Allan McChesney, "Promoting the General Welfare in the Democratic Society: Balancing Human Rights and Development" (1980) 27 *Netherlands International Law Review*, 283 à la p. 329.

88. Francisco Miro Quesada, *supra*, note 18, 307. La Commission internationale des Juristes dresse une brève liste de pressants sujets d'étude et de recherche dans le domaine du droit international des droits de la personne; "Summary of Discussions and Conclusions of the International Commission of Jurists" dans *Development, Human Rights and the Rule of Law*, *supra*, note 25, 223 à la p. 232.

III.

Human Rights and Foreign Policy: The Canadian Context

Canadian and International Human Rights Law: An Interrelationship

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Donald J. Fleming

Résumé

Alors que le langage choisi, ainsi que plusieurs des droits définis à la Charte canadienne des droits et libertés, proviennent des dispositions contenues aux traités internationaux en matière de droits de la personne, son inclusion dans la constitution du Canada porte la comparaison du côté de la jurisprudence et du modèle américains. Le Canada a abandonné le concept britannique de souveraineté parlementaire absolue mais il n'a pas, par le fait même, adopté le système constitutionnel américain. Les tribunaux canadiens ne doivent donc pas succomber à la tentation très forte de s'appuyer sur le droit américain, largement développé en matière de droits de la personne, et qui s'est constitué dans un isolement relatif face aux influences extérieures. Le droit canadien des droits de la personne est, et devrait continuer d'être, affilié plus étroitement au droit international des droits de la personne parce que les deux systèmes en sont à un stade de développement similaire et qu'ils gagneraient mutuellement à se tenir en interaction.

Par le passé, la Cour suprême du Canada a rejeté la possibilité offerte par la Déclaration canadienne des droits de faire avancer les droits de la personne au pays. Ses incertitudes et sa confusion face à ses pouvoirs ont empêché de poser une limite judiciaire à la souveraineté parlementaire, en faveur de la protection des droits de la personne. Cependant, la Charte a redonné confiance à la Cour et la

majorité de ses jugements, à ce jour, exerce une influence positive pour le développement des droits de la personne au Canada.

Si la Cour maintient sa présente lancée, le corpus de jurisprudence ainsi créé fera du Canada un chef de file dans le domaine des droits de la personne. Cela devrait encourager fortement les législateurs canadiens à accorder aux droits de la personne un rôle plus éminent, plus effectif dans la politique étrangère de ce pays et dans nos programmes d'aide au développement du Tiers-Monde.

Introduction

While it may appal some nationalists, the relation between Canada's human rights law and its international human rights obligations is sometimes intermingled with the human rights law of the United States. The situation is easily explained by the fact that Canada is now governed by a constitution setting out the rights of individuals in written form.

The wording of the rights in Canada's Charter of Rights and Freedoms (hereinafter called the Charter) is taken from--or at least is similar to the content of—pre-existing international human rights treaties to which Canada had bound itself prior to that addition to our Constitution. On the other hand, the fact that those rights were written into the Constitution and ostensibly take precedence over legislative enactments that contradict them, is analogous to the U.S. tradition. If one adds to that the large body of relevant American common law that is temptingly similar to ours, the cultural familiarity we share with our southern neighbour, the economic, social, religious, and linguistic similarities between the two countries, and the comparative lack of expertise that the Canadian bar and bench have on the public international legal system, it is not surprising that reliance on U.S. jurisprudence would lure many away from considering the norms that international law can provide when our courts must deal with significant and emotionally charged human rights issues.[1]

While the appropriateness of U.S. law poses a serious and complex problem that warrants considerable study and comment, so does the relevance and value of the international legal obligations that Canada has assumed. This paper attempts to point out the relevance of international human rights law by considering some of the interconnections it has with Canada's developing body of Charter law. It does so by proposing that we contrast the evolution of human rights law in Canada and the United States, and that we examine the relationship between international human rights and Canadian human rights law from an historical perspective. The general thesis is that the Canadian development in the area was, and should continue to be, more closely affiliated with both the pace and content of international human rights law than with the U.S. law. This country being a so-called middle power closely affiliated with the United States in virtually every way, those who conduct Canadian foreign policy must balance independence of action against the necessary, close, and natural affiliation that we must foster with the greatest world power. The human rights that Canada defines for its domestic legal system cannot help but affect its approach to Third World assistance and development, as well as the general direction that its foreign policy will take.

Human Rights Developments in Canada and the United States: A Synopsis

The British colonies that became the United States of America took up arms in revolution to rid themselves of a perceived tyranny. The success of their venture yielded a republic and a new system of government based upon a written constitution, part of which set out specific, inalienable rights of the individual. However, while respect for personal freedom from government oppression dominated the political rhetoric and beliefs of those revolutionary colonists, non-egalitarian principles like slavery remained a vested interest that U.S. leaders no less respected than Thomas Jefferson both supported and exploited. Public opinion delayed the official dismantling of the institution of slavery until the latter part of the next century; indeed, abolitionism required an even greater armed conflict, the American Civil War. Adherence to other principles contravening modern-day notions of human rights norms remains a part of U.S. law and society, just as it does in every country.

Today, while many consider the United States to be the same great bastion of civil rights that it was in 1776 when Congress adopted the Declaration of Independence, that country maintains a policy of internalizing its human rights commitments. While it may remain a leader in the development of the legal niceties pertaining to certain areas of human rights, it stands firm in its refusal to ratify any major international human rights treaty, seemingly because that would require submission to international legal and political scrutiny.[2] This is in marked contrast to ongoing human rights developments in some states like the Union of Soviet Socialist Republics, which others have frequently labelled long-term, chronic, major human rights violators. For example, the U.S.S.R. has been a party to major United Nations human rights treaties; moreover, it recently became sufficiently confident to announce its intention to ratify the Optional Protocol[3] to the International Covenant on Civil and Political Rights (CCPR),[4] which gives individuals the right to petition against the state for alleged infringements of the human rights set out in the CCPR.

In spite of the initial, significant impact that the United States had, its contribution to the further evolution of international human rights law and norms cannot help but be diminished by its absence from the various global fora that now deal with them.[5] Correspondingly, that absence will also distance U.S. domestic laws from the benefit of international human rights developments and standards. It will create lacunae that may well become more obvious and increasingly significant.

Canada chose a different road to independence which, for purposes of comparison and contrast with its southern neighbour, one could label evolution. The northern colonies (now provinces) waited much longer and acted only as a result of British insistence to unite in a dominion. (Even that achievement came via legislation from the parliament at Westminster.) Along the way, the Canadian colonies welcomed expatriate American loyalists who maintained their allegiance to the British sovereign, continued to accept foreign rule from London and by the Crown, and adopted the motherland's system of government which, at least until the Charter, embraced in full the English concept of parliamentary sovereignty.

Rule by parliamentary sovereignty, that older system of government founded upon absolute sovereign authority by divine right, is antithetical to one based on the pre-eminent, constitutionally embedded rights of the individual. However, unlike the U.S. experience, the move towards respect for human rights was not as traumatic for Canada. While it has been a slow and relatively undistinguished progression, and both individuals and minority groups may well have suffered from bearing the brunt of legal infringements on their freedoms, we did not suffer the national disaster of civil war.

Modern International and Canadian Human Rights Law: Their Associated Evolution

Canada's transition towards legalizing its respect for human rights must be examined because that process now has the potential to advance the relevant Canadian law beyond that of the United States. Furthermore, in tracing the ongoing process of this country's commitment to human rights, one can come to an understanding of the dilemma that the Charter now poses to Canada's governments and judiciary, and also begin to appreciate its relationship with international human rights law.

International Human Rights Developments

In a sense, the Government of Canada stumbled into accepting the concept of human rights much like the Canadian colonies had given themselves over to nationhood. It did not do so of its own accord, but waited for some external entity to force the issue.

A symbol of Canadian hesitancy appeared when the General Assembly of the United Nations brought the Universal Declaration of Human Rights into being.[6] In choosing to abstain on the vote in the assembly's Third Committee, Canada became notorious for joining a number of blatant human rights violators (in the final assembly vote 48 states including Canada supported the declaration, no state dissented, and two states were absent). Canada is the only state whose reason for abstaining in the Third Committee is still a mystery. Was it naivete in the conduct of its external affairs as a sovereign state newly freed from the foreign policy dictates of Great Britain; federal authorities' fear of infringing on provincial power; inability to reconcile fundamental human rights with the parliamentary system of government? Regardless, the minds of Canada's representatives at the Paris meeting of the UN General Assembly on December 10, 1948 were not with the majority of states as far as any commitment to human rights was concerned.

While treaties relating to particular human rights existed earlier,[7] the source of modern-day international human rights law is generally recognized to be the UN Charter.[8] The impetus to make provision for human rights in that treaty arose largely from haunting experiences with the atrocities committed prior to, and during, World War II. Similarly, respect for the egalitarian principles which are now considered to be longstanding and unchallenged rights in Canada, began at approximately the same time.[9]

The United Nations began formalizing the general references to human rights contained in the UN Charter almost immediately upon the organization becoming operational. In 1946, it established a Commission on Human Rights, whose first act was to prepare the Universal Declaration of Human Rights (a centrepiece of this volume). While only a resolution of the General Assembly, it became the foundation for the majority of international and regional human rights treaties which followed, and also the basis of human rights guarantees in many recent domestic constitutions and other types of instruments (e.g., declarations of intent, like the Helsinki Final Acts, 1975).[10]

Once the General Assembly had accepted the Universal Declaration, it ordered the Commission on Human Rights to draft a treaty to elaborate on those rights and impose binding obligations on states choosing to ratify it. This proved to be a far more difficult task than formulating a more generally worded resolution, and both the commission and the Third Committee of the General Assembly struggled from 1948 through 1966 to complete it.

They had to face three major issues: (1) what rights the treaty should contain, (2) how the United Nations should implement or enforce the rights set out in the treaty, and (3) whether the treaty should contain provisions granting individuals the right of petition against countries that had violated, or condoned the violation of, their human rights. True to the spirit of U.S. thought, the Western world stressed the importance of civil and political rights, while the East Bloc countries and some Third World representatives argued for the inclusion of economic, social, and cultural rights. Furthermore, many states from every part of the political spectrum and every geographical sector argued that the very nature of international law precluded any entity but sovereign countries from possessing the degree of international personality required to petition an international forum against a state.

The commission resolved these fundamental divisions of opinion by formulating two separate treaties: the International Covenant on Economic, Social and Cultural Rights (CESCR),[11] and the International Covenant on Civil and Political Rights. Additionally, it managed to provide for the right of individual petition by omitting reference to it from either treaty and, instead, drafting its procedure as a separate document, the Optional Protocol to the CCPR.[12] Although the process of negotiating, and obtaining approval of, the treaties took nearly 20 years, states were still hesitant to commit themselves to the obligations set out in them. Hence, those instruments languished yet another decade before the requisite number of ratifying countries brought them into force. They took effect in 1976, and Canada, never one to run ahead of the field, followed by ratifying them a few months later in the same year.

While the global community wallowed in the struggle to formulate binding obligations to implement the sentiments reflected in the Universal Declaration, Western European states forged ahead and created their own international human rights regime. The first-hand experience of the horrors, and perhaps collective guilt, that they carried from the 1930s and 1940s, along with a shared cultural, economic, legal, political, and social background, helped them to agree upon and implement a system which provides the global standard for all international human rights obligations. Although the member states of the Council of Europe acted when it became apparent that the effort by the United Nations was faltering, it nevertheless founded its system on the Universal Declaration.

The European Convention for the Protection of Rights and Fundamental Freedoms came into force more than 12 years before the UN commission members could agree on the texts of the major UN conventions.[13] Through the intervening years, the Council of Europe has opened for ratification six protocols to the treaty (two of which have added to the rights set out in the European Convention); and it has drafted, and given effect to, the European Social Charter,[14] which deals with economic, social, and cultural rights. As human rights in Western Europe have evolved and expanded, the work of its Court of Human Rights has generated a considerable body of jurisprudence. The Court of Justice of the European Communities, created by the Treaty of Rome[15] (the European Economic Community), is another extranational Western European judicial body with considerable power and a willingness to base its decisions on human rights norms.

Canadian Human Rights Developments: The Bill of Rights

As might be expected, Canada's human rights development was not as mercurial. Mr. Justice Tarnopolsky has traced that progression,[16] pointing out that the first step towards a modern, comprehensive law of human rights came from provincial legislation (Saskatchewan) in 1947.[17] Next, the provinces, led by Ontario in 1951, passed fair accommodation and fair employment practices legislation, which they based on a statutory scheme first introduced to North America in 1945 by the State of New York. In 1962, Ontario again led the way by consolidating all of its human rights statutes into a single one, the Ontario Human Rights Code.[18] The other provinces followed suit by consolidating their respective human rights legislation, adding protection to further rights, and creating or improving avenues of redress. In 1975, Quebec passed its Charter of Human Rights and Freedoms,[19] which "provides not just for anti-discrimination provisions and a Commission, but covers all human rights and fundamental freedoms."[20] The federal government completed that phase of the process in 1977 by enacting a "comprehensive anti-discrimination statute, with a Commission to administer it: the Canadian Human Rights Act."[21]

While there are indications, dating from 1939, of some concern by a scattering of the Canadian legal profession about laws that encroached upon civil liberties and property rights,[22] the pressure for federal action probably dates from 1945, when the federal CCF Party began advocating it.[23] The result was the enacting of a Bill of Rights, which received Royal Assent on August 10, 1960.[24]

Most constitutional scholars would agree that the Canadian Bill of Rights was not a resounding human rights success, because the jurisprudence that it fostered did not go far to advance the existing rights of individuals, and did not add new rights. While opinions may differ on why that legislation failed to encourage a sudden explosion of jurisprudence supporting human rights, the case law from our highest court provides strong evidence to suggest that the fault, if any, lay with a reluctant judiciary. Overall, the SCC's Bill of Rights decisions show that the majority of the Court could not take the power granted to it, and seemingly refused to accept the implications for vast constitutional change. Consequently, many Supreme Court justices of the time were indecisive about how, or whether, to apply the 1960 law.

The indecision and vacillation are probably best exemplified by a trio of SCC cases: *Robertson and Rosetanni v. the Queen*,[25] *R. v. Drybones*,[26] and *A.G. Canada v. Lavell*; *Isaac et al. v. Bedard*.[27] The first is an early Bill of Rights case that pitted the right to freedom of religion against the Lord's Day Act.[28] The majority of the SCC ruled that persons whose religion demands the observance of a rest day other than Sunday do not suffer any infringement on their religious freedom. Instead, the Court opined that the law requiring them to refrain from business activities on Sunday was merely a secular and financial inconvenience. In dissent, Mr. Justice Cartwright held that the genesis of the Lord's Day Act was religious, that it compels a course of conduct for a purely religious purpose, that it makes certain legal conduct illegal if one performs it on Sunday, and hence the legislation infringes freedom of religion. He argued against an interpretive role voiced earlier by a lower court,[29] which would have restricted the application of the Bill of Rights only to legislative provisions so vaguely drafted as to require interpretation, and would have prohibited its operation against any legislation that existed prior to the bill even though it clearly abrogated rights and freedoms.

A few years later, however, when the SCC decided the *Drybones* case, Cartwright (then chief justice of the Court) reversed himself and expressly repudiated his dissent in *Robertson and Rosetanni*. *Drybones* dealt with s. 94(b) of the Indian Act,[30] which "expressed in plain and unequivocal words" that "an Indian who is intoxicated off a reserve is guilty of an offence."[31] Upon having to confront that legislative provision, which clearly discriminated against a minority by making its members subject to an offence that applied to no other group, Cartwright C.J.C. chose to respect the concept of parliamentary sovereignty over the rights of the individual. He argued that the clarity of the legislation prohibited its being interpreted in any other way, and that the Bill of Rights could apply only when legislative provisions were sufficiently vague to require judicial interpretation.

While Abbott and Pigeon, JJ., in *Drybones*, agreed with the chief justice on restricting the application of the Bill of Rights, the majority of the Court did not. Ironically, perhaps, they ignored Cartwright's revised opinion and employed his earlier one in *Robertson and Rosetanni* to justify striking down the offending section of the Indian Act. The majority judgment, written by Ritchie, J.,[32] held that the Bill of Rights was more than a "rule of construction for federal statutes"; it was "a statutory declaration of the fundamental human rights and freedoms which it recognizes."[33] In order to implement that view, the majority ruled that the Bill of Rights does grant to courts the power to invalidate federal legislation, even when it existed before the bill and was so clearly drafted that it required no judicial interpretation.

At the time, many felt that the SCC had used the *Drybones* case as a vehicle to make the Bill of Rights a strong shield for the protection of human rights. Unfortunately, that perception was short-lived. The federal responsibility and power to govern aboriginal people again raised a serious human rights issue shortly thereafter, and it forced the SCC into retreat. The *Lavell and Bedard* case dealt with women who had lost their native Indian status upon marrying non-Indian men because s. 12(1) (b) of the Indian Act so dictated. The aggrieved women alleged that the legislation violated the Bill of Rights because it created inequality for women by permitting discrimination on the basis of sex. The SCC did not agree, and held that s. 12(1) (b) created no inequality for women.[34] Again, Ritchie, J. wrote the leading decision for the majority and, as with *Drybones*, he based his judgment on the dissent in a previous case.[35] The dissent around which he framed the majority decision in *Lavell and Bedard* was that of Pigeon, J. in *Drybones*, who had argued that the Bill of Rights was never intended to invalidate federal legislation which treated Indians differently than the general public.

Some judges distinguished the cases on the ground that *Lavell and Bedard* dealt with a matter involving the internal regulation of lands reserved for Indians, whereas *Drybones* did not.[36] It is, therefore, not difficult to view the judgment as a Court bias favouring administrative convenience for government authorities over the basic rights of individuals. Notwithstanding a strong dissent by Laskin, J. (later to become the chief justice), with which Hall and Spence, JJ. concurred, the power of the Bill of Rights suffered a setback. Once again, the Court retreated to the support of rule by parliamentary sovereignty—returning to the view that, in effect, the Bill of Rights should be used only as a rule of interpretation when one is needed, and that courts should not use it to change the existing state of the law.[37]

Canadian Human Rights Developments: The Charter

A political technicality is generally cited as the reason why Prime Minister John G. Diefenbaker could not make the Bill of Rights a constitutionally entrenched instrument: no one at the time would force Canada's governments to accept a method of agreeing to Canadian-made constitutional amendments. However, in 1968, when he sat in Cabinet as the federal minister of justice, Pierre Elliott Trudeau authorized work directed at implementing a constitutional amendment that would guarantee human rights protection for the individual.[38] Upon becoming prime minister, he continued that initiative; and he resumed it as prime minister in 1980, when the electorate returned his party to office after having removed it in the previous election. Finally, after considerable intergovernmental bickering, refusals by some provincial premiers to accept human rights in a constitutionally entrenched instrument and a *Reference* to the SCC, whose response was that the federal government could legally defy constitutional convention by acting on its own recognizance to patriate the constitution,[39] it was politically opportune to amend the Constitution and claim it from the authority of the British Parliament. After a watering-down of some proposals and a pacification of provincial detractors with the notorious "notwithstanding" clause, the Constitution Act came into force on April 17, 1982. The Charter of Rights and Freedoms also entered into force on that day—except for the equality rights in section 15, whose entry legislators postponed until three years later, ostensibly to abolish, or amend, legislation which they knew was denying the equality rights of certain groups.

If anything, the difficulties our courts experienced with the Bill of Rights indicate their great discomfort and feeling of inadequacy in having to invalidate legislative enactments. It may be that the cultural, educational, political, professional, and social background of its members had bred a profound respect for the authority of the Parliament. Some might choose to call it blind faith in the British system of government. In any event, our courts were not unlike our early UN representatives, who felt squeamish about voting in favour of a non-binding General Assembly resolution enumerating fundamental civil and political rights.

Now, these same courts must deal with a far more powerful tool, the Charter. As it is a constitutional provision obligating the judiciary to limit the exercise of parliamentary sovereignty whenever government infringes upon specified human rights, the courts can no longer evade the duty to exercise their power. Nor can they any longer rely on the somewhat flimsy logic that characterized their escape from the responsibility which the Bill of Rights imposed upon them.

Canadian Human Rights Developments: Post-Charter Decisions

The courts began their Charter work with dedication and exuberance. The SCC led the way with a "strong display in its early Charter decisions."[40] When dealing with the technical elements of criminal law, like cases focusing on the acquisition and admissibility of evidence, the Court appears to be most comfortable. However, some fear that the added workload and pressure that Charter cases have placed upon the members of the Court have worn it down considerably. A burden of those dimensions could well encourage another retreat towards parliamentary sovereignty, and minimize the impact of the Charter by constraining its application in difficult or politically sensitive cases. This section of the paper considers a select group of recent SCC decisions, with a view to determining how the Court has reacted to a number of contentious Charter issues. Hopefully, these cases throw light on the degree to which the SCC will rely on the Charter, and where it will search for its precedent and jurisprudential guidance.

The SCC, in *R. v. Big M Drug Mart Ltd.*,[41] again had to deal with the conflict between freedom of religion and the Lord's Day Act, and the result was quite different under the Charter than with the Bill of Rights in the *Robertson and Rosetanni* case.[42] While the Court reaffirmed that the legislation transforms the religious values of Christian morality into binding law affecting every person, regardless of religious persuasion, it reversed the earlier decision by ruling that the legislation offended the right to freedom of religion. The *Big M Drug Mart* case went further, stating that if the legislation had a secular purpose, it was not sufficient for the Court to uphold it because such matters lay within provincial, not federal, jurisdiction.

The latter part of the decision led to a flood of challenges against similar provincial legislation. The decisions in those cases rest upon whether the legislation in question was based upon a religious tenet or a secular one. A complaint about Ontario's Retail Business Holidays Act[43] provides a good example of the problem and its resolution. The SCC, in *Edwards Books and Art Ltd. v. The Queen*[44] held that the legislation did violate freedom of religion, but was justifiable under s. 1 of the Charter because it had a secular purpose and its draftspersons had made a serious effort to alleviate the effects of the law on anyone whose religion dictated a rest day other than Sunday.[45]

A more difficult case presented itself in the form of *R. v. Morgentaler*,[46] which challenged the Criminal Code provisions governing abortion.[47] McIntyre and La Forest, JJ., in a dissenting opinion, agreed that the legislation should be upheld. Dickson, C.J.C., and Lamer, J., Beetz and Estey, JJ., and Wilson, J., in three judgments, ruled the legislation to be unjustified because it infringed upon a pregnant woman's "life, liberty and security of the person." The judgment of Wilson, J. is of particular interest because she indicated that the gestation period might be a potential factor in determining the rights of both the pregnant woman and the fetus. After lengthy consideration of the U.S. case law, Wilson, J. adopted the view expressed by the U.S. Supreme Court in *Roe v. Wade*,[48] that while a women has a right to terminate her pregnancy, it is not necessarily absolute.[49] She held that a woman's right would be absolute in the early stages of pregnancy, but that the state could justify inquiring about her reason for seeking an abortion "at the later stages of her pregnancy."[50] Wilson, J. then passed responsibility from the judiciary to the legislative branch of government:

> The precise point in the development of the fetus at which the state's interest in its protection becomes "compelling" I leave to the informed judgment of the legislature, which is in a position to receive guidance on the subject from all the relevant disciplines. It seems to me, however, that it might fall somewhere in the second trimester.[51]

Unlike the judges in some Bill of Rights cases, Wilson, J. did not avoid the issue by designating it a matter for elected representatives to decide. She indicated why the legislative branch of government was more suitable to frame the rules, and held for the judiciary the legal and jurisprudential task of deciding whether those rules adhered to human rights norms.

In a case shortly thereafter, *Borowski v. A.G. Canada*,[52] a litigant attacked the abortion provisions of the Criminal Code, claiming that the fetus was a person and deserved the protection of s. 7 ("the right to life, liberty, and security of the person") and s. 15 ("the right to equal protection and equal benefit of the law without discrimination because of age, mental or physical disability") of the Charter. As the case challenged the same section of the Criminal Code which the SCC had struck down earlier in *Morgentaler*, the Court dismissed the appeal in *Borowski* for being moot.[53] Further, the Court refused to exercise its discretion to decide the merits of the case because the interpretations of ss. 7 and 15 would also affect pregnant women, whose interests could not be represented.[54] This refusal to decide the issue when it was moot did not prolong the agony of decision for very long. The *Daigle* case may well answer the questions posed by *Borowski*.[55]

While the abortion issue has generated much public reaction, the language problem may, in the long run, have the greatest political and constitutional impact (note, for example, the recent media reports about provincial premiers questioning their support of the Meech Lake Accord because of Quebec's reaction to the SCC "advertising sign" decisions). Its most striking manifestation to date has come from a concern that history might well consider a "trivial pursuit" in light of the far more significant language problems that Canada will have to face. At issue is Quebec's restriction on the language used in advertising signs, which the SCC dealt with in two cases: *Chaussure Brown's Inc. et al. v. Quebec (Procurer General)*[56] and *Singer (Allan) Ltd. v. Quebec (Procurer General)*.[57] The same bench of seven judges heard argument on the cases within a few days of one another, and the Court later released a unanimous decision in each case on the same day. Both cases challenged Quebec's Charter of the French Language, which provided that "all public signs and posters and commercial advertising" be solely in French, the "official language of Quebec."[58]

The decision in the *Chaussure Brown's* case is lengthy and deals in considerable detail with a number of important matters. Here the focus is on the meaning attributed by the Court to the term "freedom of expression." The SCC considered cases from the European Commission on Human Rights and the European Court of Human Rights, as well as U.S. case law and academic works. It distinguished the European jurisprudence because it dealt with "claims to language rights in relations with government that would have imposed some obligation on government";[59] and it rejected U.S. law, which defined "commercial expression," isolated it as a class separate from other forms of expression, and limited the U.S. First Amendment protection afforded to such expression.[60] Further, it reviewed Canadian case law on the subject which, one should note, rested heavily on U.S. precedent and commentary. The SCC concluded that it would rely upon its post-Charter jurisprudence and determine the issue in "two distinct analytical processes":

1. Using the purposive approach to interpretation, determine "the interests and purposes that are to be protected by the particular right or freedom in order to determine whether the right or freedom has been infringed in the context presented to the court."[61]
2. If a right has been infringed, determine whether the state can justify that infringement within the constraints of s. 1 of the Charter.[62]

On the first process, the Court held that, as the rights and freedoms set out in the Charter require a "large and liberal interpretation, there is no sound basis on which commercial expression can be excluded from the protection of s. 2(b)."[63] Its justification followed immediately: commercial expression "protects listeners as well as speakers" and "plays a significant role in enabling individuals to make informed economic choices," which is "an important aspect of personal self-fulfillment and personal autonomy."[64] (Whether an international tribunal would accept this view may be determined from complaints made to the UN Human Rights Committee as a result of Quebec's legislative reaction to this case.)

That conclusion having dealt only with the freedom to choose and use a language, not with the regulation of advertising, the Court went on to the second process. On the evidence presented, it ruled that the government had met the onus of establishing that the aim of its language policy (the preservation and enhancement of the status of the French language in the province) was acceptable because it was "serious and legitimate." However, the Court also held that, as the government had not demonstrated "that the requirement of the use of French only is either necessary for the achievement of the legislative objective or proportionate to it," it had failed to prove that its legislation was justified in the circumstances.[65]

The SCC softened the effect of its decision by observing that the government of Quebec could create legislation requiring the "marked predominance" of French on commercial signs, since that would meet the proportionality requirement for justifying the legislative infringement on the right to freedom of expression. In the companion *Singer* case, the Court confirmed the *Chaussure Brown's* decision, particularly the element holding that the government was free to require the predominance of French on advertising signs.

International Human Rights Law: The Interrelationship

While the SCC had the opportunity of reviewing what effect the Lord's Day Act had on the right to freedom of religion,[66] the abolition of s. 12(1) (b) of the Indian Act[67] prior to the invocation of the Charter's equality rights removed the necessity of re-examining the *Lavell and Bedard* situation.[68] However, a complaint via the Optional Protocol to the CCPR[69] provided the UN Human Rights Committee with that opportunity. Sandra Lovelace lost her Indian status upon marrying a non-Indian, returned to her reserve when the marriage had broken down, and then began to battle for the right to remain there. Because the *Lavell and Bedard* decisions precluded any domestic legal recourse, she sought protection from an international forum.

The Human Rights Committee favoured Ms. Lovelace's complaint.[70] While procedural rules governing retroactivity prohibited it from considering sex-based discrimination (Ms. Lovelace had married in 1970, over six years before the CCPR became binding on Canada), the committee found for the complainant on other grounds.[71] Among a number of the provisions which she invoked, the one most appropriate was s. 27, which guarantees minorities the right, "in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." The committee found that Canada was violating that right because there was no community other than her reserve where Ms. Lovelace could be among her own minority group, and the continued deprivation of her Indian status made it illegal for her to live there.

Canadian international human rights lawyers might like to believe that an adverse, justified finding by a human rights forum would prompt rapid legislative change, but such was not the case for Ms. Lovelace. She initiated her complaint in 1977, the committee issued its report in 1981, and the Canadian government refused to act for so long that Ms. Lovelace, in frustration, finally resorted to the very abuse built into the system to gain her status: she married an Indian male on her reserve and automatically became an Indian, as could any non-Indian female, by repeating the very act that had removed Indian status from her in the first place. When, in 1985, Canada finally amended the Indian Act,[72] the impact of its longstanding violation of an international human rights treaty was probably minimal. It is more likely that the government was rushing to beat the April 15 entry into force that year of the s. 15 equality-rights provision of the Charter.

While the international human rights treaties to which Canada is a party may not pose a serious challenge in terms of the few occasions when our governments are found to be violating them, the significance of international human rights norms is increasing. The SCC, for example, has begun to consider international human rights texts and jurisprudence. In the three Bill of Rights cases on which this paper has focused, no international jurisprudence is listed among their reference sources. However, *Robertson and Rosetanni* noted one U.S. case, and two appeared in *Drybones*. By contrast, in the post-Charter cases that generated the bulk of discussion here, there are between two and five references to international jurisprudence. References to U.S. cases and academic writing have also increased (about 10 in *Morgentaler* and seven in *Chaussure Brown's*).

In this context, it is worth citing a speech delivered by SCC Justice La Forest at the 1989 Annual Meeting of the Canadian Council on International Law (CCIL).[73] The Charter, he stated, has encouraged the SCC to become "one of the most cosmopolitan courts" because of the variety of foreign sources to which it has referred in its decisions. He also pointed out that the Charter initiative begun in 1968 was influenced by international human rights activities and by U.S. and European experience. But while La Forest, J. reported that the Court felt compelled to consider international human rights instruments *because* the Charter incorporates many of the policies and prescriptions of various international human rights documents and conforms to the spirit of contemporary international human rights movements, he added that some rights have uniquely Canadian dimension (e.g., minority, education, language, and aboriginal rights). Then, too, he indicated that while caution is exercised in their transposition to a Canadian setting, U.S. materials are the most extensively considered source of non-Canadian jurisprudence.

Concluding Observations

International Law v. Foreign Domestic Law

A comparison of Bill of Rights and Charter cases demonstrates that the increasing number of references to international and foreign law in SCC decisions is beneficial to the developing body of Canadian jurisprudence. The lure of well-designed research tools and a voluminous body of precedent make resort to U.S. case law particularly attractive. However, as the United States is not in the mainstream of international human rights activity, the evolution of general norms against which Canadian human rights law can be tested is likely to occur in an international forum. Further, since U.S. law is relatively complete and self-contained, it is not as likely to respond to Canadian input. On the other hand, international legal jurisprudence is not as large, and, like Canada's human rights system, it is young and receptive to foreign input. As international and Canadian human rights law are roughly parallel in their state of development, both can benefit from mutual exchange. Moreover, international human rights norms, being the product of a community of states, are not so tied to a specific political system or ideology as to be difficult to transpose.

There is a closer affinity between Canadian and international human rights law than between Canadian and American. Our international connection is now also stronger than our link to the British legal system. Canada has chosen to guarantee human rights by a constitutional override of parliamentary authority; and the decisions of the judiciary indicate that, unlike the situation in the past, it has accepted that power and that role. The opposite, however, might be the case for the British judiciary.

In a recent text,[74] Lord McCluskey commented on the concept of Canada's Charter: "Why it should be supposed that elderly lawyers with cautious and backward-looking habits of thought are qualified to overrule the judgments of democratically elected legislators as to what is, in the circumstances of the time, justified, I do not profess to understand."[75] This reflects the strong British respect for the system of parliamentary sovereignty, virtually unchanged from centuries ago. Also, his attitude about the powers and procedures of tribunals reflects the same traditionalist thought: it is "inconvenient and untidy . . . for our judges to have to stand aside and observe European judges, whether in Luxembourg or in Strasbourg, decide human rights and discrimination questions on the basis of materials not available to the domestic courts."[76] Whether or not Lord McCluskey exaggerates the British view, his comments symbolize the great difference that now separates Canada and the United Kingdom. We have chosen a legal path that is a clear departure from the one that governed us in our days as colonial dependents or quasi-dependents.

Human Rights Law and Canadian Foreign Policy

There has been a vast change in attitude and outlook from the SCC of the 1960s to the Court of the 1980s. Our senior judges are no longer insecure about exercising their power to invalidate legislation or government action that violates human rights.

While there is always the possibility of a return to the judicial reticence of the past, it is now reasonable to expect that the Court will contribute significantly to the development of domestic and international human rights law; and that it will foster an increased public awareness of, and respect for, human rights objectives. Such achievements will help to build a reputation for Canada as a world leader in the human rights field.

Our foreign policy will, of course, continue to reflect our evolving domestic values—those values, in turn, being partly shaped by developments abroad. In that context, SCC progress can be a catalyst for greater prominence being given to human rights in Canada's foreign-policy scheme of things.

The stimulus could be particularly strong with regard to our foreign aid program. Ottawa has come a long way in terms of recognizing an important role for human rights in development assistance to the Third World. But there is still a need to "rethink" the specifics.[77] A wide gap remains between government rhetoric and actual practice.[78] Through its ongoing advances in human rights law, the Supreme Court of Canada may well repay our legislators for an unwanted constitutional responsibility by increasing the pressure on them to integrate human rights more effectively into Canadian foreign aid.

Notes

1. At the time of writing, the Supreme Court of Canada (SCC) ruled in favour of Ms. Chantal Daigle, a Quebec woman who would have been 23 weeks pregnant. When she was 17 weeks pregnant and on route to secure an abortion, her ex-fiancé had secured an injunction forbidding it, which a majority of a divided bench of the Quebec Court of Appeal had upheld on the ground that a fetus has certain rights to live. The SCC, in an unprecedented burst of speed, heard the motion for appeal within a few days of the Appeal Court decision, cut short vacations of some members to schedule oral arguments on the merits of the case before a full bench within a week, and unanimously ruled to overturn the injunction after an hour's deliberation (reasons for the judgment are to follow). Meanwhile, however, Ms. Daigle had succumbed to the threat that nature and time would eliminate the possibility of

obtaining an abortion. With the SCC part-way through the hearing, Ms. Daigle's lawyer disclosed that she had disobeyed the injunction and had secretly obtained an abortion a few days earlier.

While Ms. Daigle may have made part of the case moot, her predicament could have a great impact on Canadian human rights law, provided that the SCC does not restrict the reasons for its decision to the intricate procedural and division-of-powers legalities that surround the case. Its circumstances could encourage the Court to define the entities that our law should protect and to determine the extent of the rights of pregnant females, fetuses, and biological fathers—by setting rules to dictate what rights take precedence over others.

For the purposes of this paper, the case is also significant because it arose just after a hotly contested ruling by the U.S. Supreme Court giving individual states power to regulate abortions. Some critics view this as a retreat from that court's 1973 decision in *Roe v. Wade* (*infra*, note 48). The Daigle case will be of interest because the SCC ruled on it while a civil court in Tennessee was hearing a dispute between separated spouses over their respective rights to, and the rights of, seven of their deep-frozen, test-tube-fertilized embryos.

2. The United States has ratified only the Slavery Convention of 1926 and its amendments, the UN Protocol Relating to the Status of Refugees, and the UN Convention on the Political Rights of Women (see *Human Rights: Status of International Instruments as at 1 March 1988*, UN Doc. ST/HR/5). It has also ratified a regional human rights treaty produced by the Organization of American States: the American Convention on Human Rights (signed 1969; in force in 1978; *OAS Treaty Series*, No. 36).

3. Signed 1966. Annex to G.A. Res. 2200, 21 UN GAOR, Supp. (No. 16) 59, UN Doc. A/6316 (1966). See "Soviets to Sign Human Rights Protocol," *The Globe and Mail* (Toronto), April 7, 1989, p. A-3.

4. Signed 1966, Annex to G.A. Res. 2200A, 21 UN GAOR, Supp. (No. 16) 52, UN Doc. A/6316 (1966). In force for Canada on August 19, 1976.

5. See, for example, Asbjørn Eide, *Pocket Guide to the Development of Human Rights Institutions and Mechanisms* (Council of Europe, 5 May 1989, Doc. E 15.470 06.1.) This concise, lucid outline of human rights development mentions the U.S. contribution to the development of eighteenth century "natural rights"

as part of its introductory historical background. The author then outlines further human rights developments from national institutions for their protection and promotion to the emergence of international systems created to foster that purpose. While the main focus is on contributions in the Council of Europe, the implication is clear that a state's commitment to human rights can only be fully realized by membership in effective, operational international bodies, be they global or regional.

6. G.A. Res. 217 (III), 3 UN GAOR Supp. (No. 13) 71, UN Doc. A/810 (1948).

7. See L.C. Green, "Protection of Minorities in the League of Nations and the United Nations," in *Human Rights, Federalism and Minorities*, ed. by A. Gotlieb (Toronto: Canadian Institute of International Affairs, 1970), p. 180.

8. See L. Goodrich, et al., *Charter of United Nations: Comments and Documentary*, 3d ed. (Boston: World Peace Foundation, 1969); also A. Petrenko, "The Human Rights Provisions of the United Nations Charter" (1978), 9 Man. L.J. 53.

9. See W.S. Tarnopolsky, *Discrimination and the Law in Canada* (Toronto: Richard DeBoo, 1982) (now an ongoing looseleaf service from the same publisher). As the text points out, human rights at the time in Canada focused on particular needs: "Although . . . there were isolated legislative attempts in the 1930s to overcome racial discrimination in Canada, it was not until the end of World War II, particularly thereafter, that the trend to anti-discrimination legislation developed" (p. 4).

10. This document is the result of three years of sessions of the Conference on Security and Cooperation in Europe (1973-1975), aimed at improving international relations, particularly between the East and the West. Thirty-five states signed the Helsinki Final Acts which, because they are not eligible for registration under Article 102 of the Charter of the United Nations, cannot legally bind states. The publicity that subsequently developed around the document may have made it appear to be far more important than most treaties. In turn, this has generated arguments supporting the view that the final acts have become binding on states in spite of the original intention. See H.S. Russell, "The Helsinki Declaration: Brobdingnag or Lilliput?" (1976), 70 Am. J. Int. L. 242; S. Williams and A. deMestral, *An Introduction to International Law Chiefly as Interpreted and Applied in Canada*, 2d ed. (Toronto: Butterworths, 1986), p. 319.

11. Signed 1966, Annex to G.A. Res. 2200A, 21 UN GAOR, Supp. (No. 16) 49, UN Doc. A/6316 (1966). In force for Canada on August 19, 1976.

12. There was no protocol for the CESCR because the rights with which it deals were deemed to be too subjective to permit individuals to make valid complaints about alleged violations.

13. Hereinafter called the European Convention. Signed 1950, in force 1953 (Council of Europe, European Treaty Series, no. 5). See, e.g., F.G. Jacobs, *The European Convention on Human Rights* (Oxford: Clarendon Press, 1975); and L. Mikaelsen, *European Protection of Human Rights: Practice and Procedure of the European Commission of Human Rights on the Admissibility of Applications from Individuals and States* (Alphen aan den Rijn: Sijthoff and Noordhoff, 1980).

14. Signed 1961, in force 1965 (Council of Europe, *European Treaty Series*, no. 35).

15. EEC Treaty 1957, Cmnd. 4864.

16. *Supra*, note 9, pp. 25-37.

17. Saskatchewan Bill of Rights, S.S. 1947, c. 35.

18. S.O. 1961-62, c. 93.

19. S.Q. 1975, c. 6.

20. Tarnopolsky, *supra*, note 9, p. 31.

21. Ibid.; S.C. 1976-77, c. 33.

22. See W.S. Tarnopolsky, *The Canadian Bill of Rights*, 2d ed. (Toronto: McClelland and Stewart, 1975), pp. 3-5.

23. Ibid., p. 11.

24. Ibid., p. 14.

25. [1963] S.C.R. 651.

26. [1970] S.C.R. 282.

27. [1974] S.C.R. 1349.

28. R.S.C. 1952, c. 171.

29. *R. v. Gonzales* (1962), 32 D.L.R. (2d) 290 at 292.

30. R.S.C. 1952, c. 149.

31. Per Cartwright, C.J.C., in *R. v. Drybones, supra*, note 26, at p. 286.

32. The Court was divided by four to three. The majority were Fauteux, Martland, and Judson, JJ., concurring with the judgment of Ritchie, J.

33. *R. v. Drybones, supra*, note 26, at p. 293.

34. The Court made that finding even though the act permitted male Indians to retain their status on marrying non-Indian women (who, incidentally, would automatically gain Indian status upon marriage to an Indian).

35. Again, Fauteux, C.J.C., Martland, and Judson, JJ. concurred with Ritchie, J.

36. See the judgment of Ritchie, J. in *Lavell and Bedard, supra*, note 27 at p. 1372.

37. Ritchie, J. indicated a preference for that restricted use of the Bill of Rights when he stated, in *Lavell and Bedard*, that "the meaning to be given to the language employed in the Bill of Rights is the meaning which it bore in Canada at the time when the Bill was enacted, and it follows that the phrase 'equality before the law' is to be construed in the light of the law existing at that time." *Lavell and Bedard, supra*, note 27, at p. 1365.

38. For a summary, see Dale Gibson, *The Law of the Charter: General Principles* (Toronto: Carswell, 1986), pp. 30-41.

39. *Reference re: the Amendment of the Constitution of Canada* [1981] 1 S.C.R. 753 (sub nom. *A.G. Manitoba v. A.G. Canada*; *A.G. Canada v. A.G. Newfoundland*; *A.G. Quebec v. A.G. Canada*).

40. Gibson, *supra*, note 38, at p. 40.

41. [1985] 1 S.C.R. 295.

42. *Supra*, note 25.

43. R.S.O. 1980, c. 453.

44. [1986] 2 S.C.R. 713.

45. Section 1 condones legislation that contravenes rights set out in the Charter, provided that one can demonstrate that the violation is justified because it is reasonable in a free and democratic society.

46. [1988] 1 S.C.R. 30.

47. R.S.C. 1970, c. C-34, s. 251.

48. 410 U.S. 113 (1973).

49. *Supra*, note 46, at pp. 169-70.

50. Ibid., p. 183.

51. Ibid.

52. [1989] 1 S.C.R. 342.

53. Ibid., per Sopinka, J., writing for the seven judges on the bench, at p. 357.

54. Ibid., pp. 364-5.

55. Note 1, *supra*, sketches the details of the *Daigle* case.

56. [1988] 90 N.R. 84 (SCC).

57. [1988] 90 N.R. 48 (SCC).

58. R.S.Q., c. C-11.

59. *Supra*, note 56, at p. 128.

60. Ibid., p. 132.

61. Ibid., p. 144.

62. Ibid.

63. Ibid., p. 145.

64. Ibid.

65. Ibid., p. 159.

66. *Supra*, per *Robertson and Rosetanni*, at note 25; and *Big M Drug Mart*, at note 41.

67. For the amendments to the Act, see S.C. 1985, c. 27.

68. *Supra*, note 27.

69. *Supra*, notes 3 and 4.

70. *Lovelace Case*, R. 6/27, in *Report of the Human Rights Committee*, 36 UN GAOR Supp. (No. 40) 134, UN Doc. A/36/40 (1981), p. 166.

71. Notwithstanding the rule on retroactivity, one committee member appended an opinion agreeing with the committee report but adding that Ms. Lovelace continued to suffer "from adverse discriminatory effects." Ibid., Individual Opinion of Mr. Nejib Bouziri.

72. *Supra*, note 67.

73. The speech is scheduled for publication by the CCIL in October 1989.

74. Lord McCluskey, *Law, Justice and Democracy* (London: Sweet and Maxwell and BBC Books, 1987).

75. Ibid., p. 45.

76. Ibid., p. 50.

77. With thanks to Professor Irving Brecher for "Rethinking Foreign Aid", *Policy Options* 8 (April 1987), p. 24.

78. Charlotte Montgomery, "Human Rights Records Ignored in Aid Decisions, Minister Says," *The Globe and Mail* (Toronto), June 9, 1989, p. A-4.

Towards a Systematic Appraisal of Human Rights Orientation in Foreign Policy—A Normative Analysis*

Amyn B. Sajoo

Résumé

Quels sont les éléments nécessaires à l'élaboration d'une politique extérieure orientée dans le sens de la protection des droits de la personne? Comment ces éléments interréagissent-ils à l'intérieur de la dynamique du processus de décision et avec elle? Il faut donner une réponse adéquate à ces questions et à des questions analogues pour pouvoir procéder à l'évaluation de toute orientation en faveur des droits, déclarée ou véritable, de la politique extérieure d'un pays.

La réponse fournie par cet article provient de la preuve empirique recueillie au cours des dix dernières années relativement aux politiques adoptées par le Canada, les Etats-Unis et d'autres pays, en matière de violations flagrantes des droits de la personne au niveau international. Ces politiques sont évaluées en fonction des principaux *instrument* de mise en application des politiques—unilatéraux, bilatéraux et multilatéraux—dans la partie 1, et en fonction *du contexte* de prise de décision politique, dans la partie 2.

Enfin, on propose une matrice qui combine les éléments de politique déjà mentionnés (déclaratoires et véritables), les acteurs et les processus politiques, permettant ainsi une évaluation globale des orientations en faveur des droits de la personne.

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Since the Carter administration formally—and with much fanfare—committed the United States in 1977 to a foreign policy guided by principles of international human rights, interest has grown in the nature and ramifications of such a pursuit. Certainly, the rhetoric and reality of policies concerning human rights under the Carter and Reagan administrations provide abundant empirical material for an investigation into the challenges confronting rights-orientation amidst sharply competing interests within the calculus of "national interests."

The legacy of the Carter era has extended well beyond the United States itself. A number of countries have since adopted parallel legislative measures linking their foreign economic and military assistance policies with human rights criteria. Indeed, the vocabulary of foreign policy (like that of domestic affairs) in many parts of the world has become infused with "rights-talk." At least some of this is directly attributable to the expectations—and apprehensions—raised by the early pronouncements of the Carter administration.[1]

Events in Argentina, Central America, Chile, the Middle East, and South Africa provided an acid test for governments professing the primacy of human rights criteria in external relations from the mid- to late 1970s. Here in Canada, the first official speeches on the subject tracked the pronouncements issuing from Washington as to intent,[2] though the Trudeau government gradually embarked on a somewhat different substantive course.[3] Globally, the processes of human rights policy making necessarily vary with different national political systems.

As more and more "linkages" emerge between norms of international human rights—both civil-political and socio-economic—and the conduct of commercial, political, and even cultural relations with the outside world, the pursuit of rights-orientation becomes increasingly complex. Perceived through the contours of diverse political systems, the elements and instrumentalities of human rights policy making may easily be obscured. It therefore becomes even more difficult to assess the degree of rights-orientation in a country's foreign policy. This assessment is significant not only in terms of external comparisons with other states, but also for purposes of internal comparison against professed objectives and commitments. The latter must clearly include commitments under the International Bill of Rights, unequivocally obligating state parties to promote universally the norms contained therein.

This paper will adopt an analytical framework that addresses the key elements of a human rights foreign policy (section I) and the context of their operational environment (section II), culminating in a schema or matrix within which a critique of human rights orientation can be situated (section III).

I. Conducting a Human Rights Foreign Policy: Ends and Means

In considering the unilateral, bilateral, and multilateral policy *instrumentalities* relevant to the promotion of human rights, a central theme must be the correspondence between professed and actual patterns of conduct, or what is commonly referred to as the "rhetoric-action gap." Indeed, exhortation and rhetoric is a feature not only of policy making in this sphere, but also of the normative regime itself, where "hard" and "soft" law converge.

Accordingly, the elements of policy making below will be grouped under the rubric "declaratory" or "actual," depending on their implications. Ratifying an international human rights agreement, for instance, constitutes declaratory conduct *per se*, whereas participation in multilateral economic sanctions against a human rights violator exemplifies actual behaviour. A degree of overlap in this classification is inevitable, and should be reflected in the application of the critique.

Inasmuch as the declaratory and actual policy instrumentalities here also represent the indices of rights-orientation, it is recognized that they operate in relative rather than absolute terms. The failure to issue a public statement in response to an egregious violation of human rights, for instance, may on occasion be motivated by a *bona fide* consideration for the victims. Nevertheless, a presumptive priority may reasonably be accorded to the proposed indices—always subject to empirical correction—in a world where the demands of realpolitik are all too readily asserted.

1. *Elements of "Declaratory" Policy*

(a) *Unilateral Statements on Human Rights Issues*

The logical point of departure in examining foreign policy commitment to the promotion of human rights lies in articulated positions on pertinent issues. Public statements serve as a mode of expressing, *inter alia*, criticism of rights abuses abroad and general or specific policy perceptions on rights questions. While obviously bearing a substantial self-serving potential for states, they also stand to be measured against actual conduct.

Arguably the principal contribution that can be made by declaratory policy in the form of public statements on particular issues is in fostering a standard of expectation, national as well as global, apropos acceptable conduct affecting human rights. To illustrate, the widespread denunciation of *apartheid* in South Africa, *simpliciter*, has created a minimum level of expectation that states will undertake "appropriate" action. Governments are at the very least constrained from condoning *apartheid* or its ramifications; progressively higher demands ensue on national foreign policies as to what constitutes an appropriate response to the continuance of *apartheid*, or to those states failing to join the consensus.

A further aspect of unilateral public declarations relevant to human rights policy making concerns the prospective legal effect thereof. Where solemn policy undertakings are articulated implying an intent to be bound, such statements have been found by the International Court of Justice to create definite legal obligations. The court ruled in the *Nuclear Tests* (1974) cases that the legal principle of presuming good faith in transnational relations binds the maker of unilateral statements under certain circumstances (parallel to the *pacta sunt servanda* rule in general international law):

> It is well recognised that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations . . . When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration . . . [N]othing in the nature of a *quid pro quo* nor any subsequent acceptance of the declaration, nor even any reaction from other States is required for the declaration to take effect.[4]

Clearly, the foregoing can contribute to the process of fostering policy expectations, albeit within the terms outlined by the court.

If a healthy cynicism over the responsiveness of egregious violators to moral censure is inspired by the experiences of Uganda under Idi Amin and Cambodia under Pol Pot, the general sensitivity of states to such public criticism cannot be doubted. That explains the reluctance of governments to engage in "open" rather than "quiet" diplomacy. Hence, the Carter administration's Assistant Secretary of State for Human Rights Patricia Derian maintained that discrete action—contrasted with "silent diplomacy"—constituted "the first tool of implementation" of a human rights policy.[5] Derian argued that "another government may then find it easier to make changes in its practices without seeming to be knuckling under to outside pressures."

Although private diplomacy must always be part of the arsenal of a rights-oriented foreign policy, its very nature renders it difficult, if not impossible, to determine its existence or effectiveness. Forgoing the leverage of public attention upon severe violations is not a step to be taken lightly.

Suggestive in this regard is the relatively recent emergence of non-governmental organizations, whose only significant policy instrument for the promotion of international human rights is declaratory. Less encumbered by the diplomatic and ideological moorings of state-actors, organizations such as Amnesty International, Helsinki Watch, and the International Commission of Jurists have successfully mobilized public opinion against the barriers of sovereignty.[6] In the process, they have become critical partners for national governments and the United Nations in the effective use of public diplomacy.

(b) Affirmation of International Human Rights Instruments

Agreements of a humanitarian nature have been a feature of international relations since the last century, envisaging, *inter alia*, the protection of civilians in time of war, the protection of religious minorities, constraints on the use of force in inter-state affairs, and prohibitions on chemical warfare.[7] The post-World War II period, however, has witnessed the first attempt to provide normative protection for the full panoply of individual rights and freedoms on a global basis.

Drawing upon provisions of the UN Charter that enshrine the promotion of fundamental rights as a *sine qua non* for enduring peace and security, the Universal Declaration of Human Rights and the companion International Covenants on Civil-Political and Socio-Economic-Cultural Rights collectively comprise an "International Bill of Human Rights" for contemporary society.[8] A number of more specific norms are protected in conventions on genocide, racial discrimination, refugees, women, children, apartheid, and torture.[9] In addition, regional agreements extend and adapt the reach of the International Bill of Human Rights to Europe, the Americas, and Africa.[10]

Sovereign affirmation of this normative regime through ratification and cognate acts, coupled with the process of "crystallization" through customary international law, has made the subject of compliance with fundamental norms a legitimate global concern.[11] This formal readiness of states to submit their internal practices to external standards and judgement, with the reciprocal capacity to invoke the latter in their bilateral and multilateral relations, forms an important indicator of rights-orientation. *A fortiori* in the instance of states party to the Optional Protocol attached to the International Covenant on Civil-Political Rights, which allows for individual complaints against their governments to a Human Rights Committee in Geneva.[12]

It is a trite observation that a normative regime without effective implementation constitutes an empty promise on behalf of fundamental rights and freedoms. While procedures for monitoring, reporting, and reviewing state practice are duly provided for in most human rights agreements—and especially so in the regional arrangements—

the overall implementation process remains at an embryonic stage.[13] This is hardly surprising when seen in proper historical perspective: arguably no other area in international law or relations has undergone as radical a structural transformation within such a short period as the question of human rights.

Pending the enhanced effectiveness of relevant treaty procedures, other instrumentalities such as bilateral trade and multilateral lending remain critical in inducing norm-compliance. Far from undercutting the importance of human rights agreements and the normative regime, however, the prevailing situation only accentuates the need for a stronger consensus on applicable norms. Given that one-third of the community of states has yet to formally affirm the International Bill of Human Rights and other major agreements,[14] the challenge ahead is substantial.

2. *Elements of 'Actual' Multilateral and Bilateral Policy*

(a) Initiatives at Global and Regional Fora

Insofar as the international human rights regime reflects the voluntary consensus of the community of states, the latter bears primary responsibility for its implementation and enforcement. Under article 56 of the UN Charter, member states pledge to undertake joint and separate action in cooperation with the organization for the promotion of universal rights and freedoms. Encompassed are various multilateral oversight mechanisms, institutional resolutions pertaining to human rights abuses, prospective sanctions against egregious violators for threats to peace and security, and the "good offices" function of multilateral agencies (especially the UN secretary general).

Further, the modes of enforcement normally available to states upon the violation of their rights under international law also apply in respect of regional and global human rights treaties. This, as the jurist Louis Henkin explains, follows from the normative effects of those treaties:

> International human rights agreements are like other international agreements, creating legal obligations between the parties and international responsibility for their violation . . . No human rights agreements, even those that establish elaborate enforcement machinery, expressly or by implication exclude the ordinary interstate remedies. In fact, the principal human rights agreements clearly imply the contrary: that every party to the agreement has a legal interest in having it observed by other parties and can invoke ordinary legal remedies to enforce it.[15]

The "ordinary interstate remedies" would include diplomatic protection and related initiatives, action before national courts, settlement under transnational arbitration, complaints before the UN Security Council, and an advisory opinion from the International Court of Justice.

Reference was made earlier to the limits of existing norm-compliance procedures under the relevant agreements. This applies even to the more elaborate review and complaint arrangements, such as those under the Optional Protocol to the Covenant on Civil and Political Rights (insufficiently universal), and the UN Economic and Social Council's procedures under resolution 1503(XLVII) (virtually impossible to operate against an obstructionist violator).[16]

On the other hand, increased state accountability to international institutions for the fate of political prisoners and the disappeared, for practices of torture, and for institutionalized racial discrimination, is rapidly becoming commonplace. The price for governments failing to cooperate is unwelcome publicity and denunciation—or the "mobilization of shame."

At the regional level, impressive gains have been achieved by the European Commission on Human Rights, catering to groups and individuals as well as to state parties in the implementation of the European Convention on Human Rights.[17] Similar efforts under the Inter-American Convention on Human Rights,[18] and more recently under the African Charter on Human and Peoples' Rights,[19] offer cause for optimism.

Another regional agreement, the Helsinki Final Act of the 35-nation Conference on Security and Cooperation in Europe (CSCE), is illustrative of the potential for human rights activism with minimal institutional machinery.[20] An "alternative culture" of non- and intergovernmental organizations, parliamentary commissions, and religious groups has developed to publicly review compliance with the rights-related provisions of the final act. While the substantive achievements of the "Helsinki process" have been circumscribed by ideological differences, its value in legitimating human rights promotion in East-West relations cannot be doubted.

In sum, the array of global and regional processes attending the normative regime presents a rather limited but nonetheless tangible means for the multilateral promotion of human rights. Within the existing structural limits noted above, the scope remains for effective action by governments as well as citizens' organizations.

(b) Action at International Financial Institutions

The relationship between multilateral lending and human rights practices among recipient governments is attested to by considerable evidence from the past two decades. Such credits have bolstered South

Africa's faltering economic fortunes at crucial periods, for example, not least during the 1976-1977 Soweto uprising when much needed "security" funding became available through a US $0.5 billion loan.[21] Again in 1982, Pretoria successfully countered a severe decline in investor confidence by securing US $1 billion in multilateral credits, despite sustained opposition from human rights organizations and the UN.[22]

Similarly, the regime of Gen. Lucas Garcia in Guatemala, whose record of torture, arbitrary killings, and even genocide against the indigenous population provoked worldwide condemnation, elicited substantial "development" credits from multilateral agencies during 1980-1981.[23] The still more odious government of Gen. Rios Montt that seized power from Garcia in 1982 had little difficulty in borrowing US $18 million for a rural telephone system widely suspected to be of use mainly for military surveillance against "communist" *campesinos*.[24] Equally, development credits worth US $1.1 billion were readily forthcoming for Chile's Pinochet regime after 1985, following a brief interruption because of U.S. congressional concerns over repression in that country.[25]

At issue are the lending criteria of the International Monetary Fund (IMF), the World Bank Group, and the five regional developments banks (African, Asian, Caribbean, European, and Inter-American). None of these institutions incorporates rights-related factors within the operative lending criteria; most explicitly *exclude* what are regarded as non-technical considerations. Typically, the World Bank's "Articles of Agreement" provide:

> The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes [of the Bank].[26]

As specialized agencies of the United Nations, the World Bank and the IMF would be expected not to operate in a manner inconsistent with the principles and purposes of the UN Charter, which accord high priority to the promotion of universal human rights. A similar expectation obtains in the case of the five regional development banks, all of which are patterned on the World Bank, and whose members are parties to the UN Charter.

Indeed the linkage between "economic considerations" and human rights conditions have been acknowledged even in the agencies' staff reports. Thus, a May 1983 study by the IMF on the

South African economy concluded that legislation concerning labour and educational practices produced market deficiencies "based on non-economic considerations" (or *apartheid*).[27] Indeed, conditions of civil war or other domestic strife that impact upon both national economic performance and respect for fundamental rights weigh routinely upon staff evaluations of loan requests from governments—but without explicit reference to the latter consideration.

These inconsistencies are matched by those of member states professing adherence to human rights criteria in their *bilateral* assistance policies, as well as more generally in their external relations. Canada, for instance, sponsored a UN resolution denouncing the violations under Rios Montt in Guatemala, then suspended bilateral aid to that country, but voted affirmatively for all multilateral credits to that regime.[28] Earlier, the Trudeau government had voted affirmatively on all IMF loans to South Africa, while the Mulroney government supported the World Bank's billion dollar credit package to Chile despite frequent Canadian denunciations of Pinochet.

The ostensible rationale for this posture has always been the perceived need to avoid "politicizing" the multilateral lending process, consonant with the restrictive criteria set forth in the institutions' charters. These arguments are disingenuous best. The conditionality attached to loans and development assistance habitually involves political measures to be undertaken by the recipient government, notwithstanding the prospect of upheaval in the countries involved. Moreover, the lending record of the principal institutions—notably with regard to Central and South America—evinces an active role for ideological considerations in voting and planning decisions, especially over the past decade.

As for the question of legality in overtly incorporating human rights criteria, it is noteworthy that under the Carter administration, the United States adopted legislation so conditioning all its voting decisions in multilateral development banks.[29] No objections ensued from Canadian or other sources over the validity thereof. Congressman Tom Harkin's defence of such legislation in 1977 remains a cogent answer to any such objections:

> The way in which foreign policy has been molded by the international public and private banking community, in our name, with our money, and largely without accountability is not divorced from the question of human rights. We must begin to understand and acknowledge precisely, what role these lending institutions have played in bolstering regimes who have the "honorable intention" of repaying international debts by any means necessary—including the

> destruction of legal and political institutions and all the violations of human rights I have just mentioned.[30]

The relevant legislation invokes recognized international norms as its terms of reference, and expresses a preference for multilateral projects "which address basic human needs for the people of the recipient country." As such, the U.S. approach (though not necessarily practice) serves as a useful model for other countries to mold their own foreign policy on human rights.

(c) Friendly Inter-State Relations

The readiness of a state to alter otherwise normal relations with another will obviously depend on perceptions of the underlying national interest—qualified by applicable legal and political norms. Apropos, in this regard, are the provisions of the 1970 Declaration on Principles Concerning Friendly Relations (deemed to embody basic norms of international law).[31] Under the declaration, the "duty of States to co-operate with one another" encompasses not only the "economic, social, cultural, technical and trade fields," but also the "promotion of universal respect for, and observance of, human rights and fundamental freedoms."

The fields of economic (including commercial, trade, and aid) and military relations raise distinctive issues *vis-à-vis* the promotion of human rights, to be examined in subsequent sections. The residual fields of bilateral ties as they may affect human rights policy making are addressed here.

Inter-state cooperation *qua* normative obligation under the 1970 declaration is conceived essentially in functional terms, justified by the need to preserve security, economic stability and progress, and the general welfare of nations. Cognizance must also be had, however, of the symbolic value attached to such aspects of "friendly" relations as diplomatic recognition and representation, sporting links, exchanges of inter-governmental visits, and cultural ties. These forms of association with governments in serious violation of fundamental human rights may widely be perceived as condoning the violations.

Sporting links between nations have become a particularly sensitive area of political symbolism, as attested by the boycotts affecting not only the Commonwealth and Olympic games, but also notably tournaments in cricket, rugby, soccer, and tennis. Contacts with South Africa in these and other socio-cultural areas carry the burden of citation on the international blacklist maintained by the UN Centre Against Apartheid.

The maintenance of diplomatic relations with egregious violators can be especially problematic. It has been argued that the isolation of Cambodia during 1975-1978, when massive genocide was conducted by the Pol Pot regime, abetted the plight of the victims.[32] Some argue today that preserving diplomatic lines of communication with repressive regimes can help deter severe violations and encourage constructive change.

The margin between "neutral" or "constructive" contact on the one hand, and "friendly" relations on the other, is perilously narrow and defies generalization. In the absence of clear evidence as to whether the retention of say, diplomatic relations, with a severe violator serves as a conduit for positive influence or merely helps preserve the *status quo*, one is obliged to judge by the results, on a case-by-case basis.

The force of the "guilt by association" logic lies in placing the onus on the associator to counter the implications of apparently friendly relations, whether diplomatic or socio-cultural. This is not an unreasonable presumption in judging governments generally guided by the need for "normal" relations.

(d) Aspects of Economic Relations

The spectrum of bilateral and multilateral relations in this context is a broad one for the modern state: it includes investment and trade, bank loans and tourist promotion, and foreign assistance policies. In a world of high interdependence, the functional significance of these channels of association is axiomatic, inevitably making them a principal index of human rights orientation in foreign policy. Moreover, the symbolism of these association—as of other aspects of "friendly inter-state relations" noted previously—cannot be ignored.

From the perspective of a government engaged in severe human rights violations, trade and foreign investment represent not only essential forces in maintaining (or even enhancing) the economic and therefore the political *status quo*, but also in preserving the semblance of normality and credibility. Foreign assistance can contribute similarly, especially in the poorest Third World countries where systemic violations are rampant.

Accordingly, the burden of rights-oriented policymaking is twofold. Avoiding direct or oblique *complicity* in the violations and seeking to *deter* them through economic means are the primary objective. In addition, the needs of the general population in "target" states must be considered, to minimize injury to those already victimized by human rights violations. In situations of prolonged gross and systemic violations, however, the latter have often expressed a readiness to withstand short-term injury for fundamental long-term change.[33]

The record of trade and commercial policy linkages with human rights practices offers a very limited indication of the efficacy of sanction, bilateral or multilateral. Whether in the case of United

States action against Poland (over the imposition of martial law in 1981), or UN measures against Rhodesia in 1965 (over the Smith regime's denial of majority rule) and South Africa in 1977 (over worsening *apartheid* conditions), the sanctions have been uniformly limited in range as well as application.[34] A number of recent studies on this question suggest that the economic and psychological costs of meeting the pressure even of limited sanctions have been higher than is often claimed by detractors.[35]

In the sphere of foreign aid, countries have adopted various strategies for human rights conditioning, seeking to balance the two paramount policy objectives outlined above. A further balance must be struck between promoting civil-political and socio-economic rights, as evinced in the approach of the Netherlands, for example. Dutch legislation provides that foreign assistance must be guided, *inter alia*, by "the extent to which a social and political structure is present which will make possible a policy truly designed to improve the situation within the [recipient] country and will benefit the whole community," with "particular attention . . . to the policy pursued with regard to human rights."[36]

Former Dutch Minister for Development Cooperation, J.P. Pronk, explained the underlying rationale thus:

> We must try to use channels which reach people directly, and for this reason we attach great importance in our polices on human rights and development aid to national and international non-governmental organizations active in the promotion of justice and freedom. The view is gaining ground, and it is supported by practical experience, that in situations of oppression, exploitation and persecution, the dominant political, economic and military powers are not suitable instruments for bringing about reform . . . .[37]

Somewhat more inclined towards the promotion of civil-political rights is the 1975 "Harkin Amendment" to the Foreign Assistance Act in the United States, which holds:

> No assistance may be provided . . . to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges or other flagrant denial to life, liberty, and the security of person, *unless such assistance will directly benefit the needy people in such country*.[38] [Emphasis added]

Canadian governments have long asserted the need to ensure that human rights conditioning does not inflict injury on the poor, to the extent that such conditioning has been minimal.[39] More recently, parliamentary reports recommending explicit linkage have found a resonance in actual policy planning by the Canadian International Development Agency (CIDA), especially in the use of non-governmental channels of aid in problematic situations.[40] But in the absence of appropriate binding legislation, public accountability remains *ad hoc*.

Germane to all the foregoing policy approaches is their compatibility with norms of international law prohibiting intervention in the sovereign or domestic affairs of another country. The 1970 Declaration on Friendly Relations referred to earlier prohibits "measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights."[41] Other multilateral declarations contain similar proscriptions on the use of economic or political means for coercive ends.[42] Do the aforementioned Dutch and U.S. aid policies constitute impermissible intervention?

The answer is emphatically in the negative. The promotion of human rights is no longer confined to domestic affairs, but constitutes a universal obligation. As Schachter has observed, moreover, "denial of aid and public expressions of disapproval are not, in and of themselves, unlawful measures, and they surely do not become unlawful when they are used to induce compliance with an international obligation."[43] On the contrary, the failure of states to undertake meaningful action to avoid complicity in or to deter through peaceful means the severe violation of human rights, amounts to a dereliction of applicable legal, political, and ethical obligations.

(e) Aspects of Military Relations

More than any other element of foreign policy, military relations are susceptible of directly and conspicuously implicating a state in human rights violations by another. The sensitivity that normally attaches to military ties within the context of perceived "national security" considerations only raises the stakes in an appraisal of rights-orientation.

Potential interactions between human rights conditions and military ties include the direct use of equipment and training to facilitate official repression, including "dual purpose" supplies (from aircraft to nuclear reactors) purportedly for civilian use. With arms trafficking burgeoning into exports worth $40 billion to the Third World by 1985[44]—excluding dual use items and military services—the scale of external complicity in human rights violations is overwhelming.

Further, sustained military cooperation may involve support for authoritarian institutions and military-industrial complexes, distorting already fragile societal structures, and reinforcing the likelihood of systemic human rights abuses. Obvious examples of such "client" relationships would be those of the Shah's Iran with the United States, and North Korea's Kim Il Sung with the Soviet Union. In those and other instances, the military patrons are widely perceived as implicated in client-state violations.

Whether motivated by the search for profits, geopolitical advantage, or national security, the conduct of bilateral military relations with violators is fraught with long-term perils for patron and client states alike, often as a result of enforced radical change in the latter. The dependence created by arms trafficking occurs on both sides—the supplier becoming increasingly needful of exports to support domestic arms manufacturing.[45]

Ironically, the recent large-scale expansion of military ties on a global level has been accompanied by new attempts to introduce human rights criteria in bilateral military relations. Canada, which exports over $2 billion worth of arms annually,[46] includes in its export licensing rules some rights-related restrictions.[47] Their practical application, however, has long been poor, resulting in circumventions for South Africa, the Nicaraguan Contras, Chile, and Iran, among others.[48]

More forthright is the legislative conditioning by the United States since 1978 under section 502B of the Foreign Assistance Act, which requires appropriate clearances from the executive branch for sales to severe violators:

> Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces . . . unless the President certifies in writing . . . that extraordinary circumstances exist warranting the provision of such assistance.[49]

In more general terms, the 1981 International Security and Development Cooperation Act "finds that the security of the United States and other countries is increasingly affected by a broad range of global problems including . . . desperate poverty; sickness; population pressures," urging policymakers to be guided accordingly in construing national security needs.[50]

It is noteworthy that a 1987 parliamentary committee report recommended similar guidelines for Canadian policy, in connection with the inverse correlation between arms spending and development efforts in the Third World:

> Our aid should not allow any government to spend more on arms and less on basic needs . . . In keeping with our own priorities and values, Canada should ask questions and expect answers in the case of recipient countries whose governments' budget allocations put more emphasis on the military than on programs of social and economic welfare.[51]

The committee urged that prohibitions on military exports to violators be incorporated in the Export and Import Permits Act. However, current export-control regulations in Canada, as already suggested, are attended by evaluation processes that have failed to prevent covert sales to supposedly disqualified clients. From the standpoint of effective public accountability and the mobilization of pressure in favour of human rights, the existence of clear legislative procedures in this regard is no less essential in respect of military as in economic relations.

II. The Human Rights Policy-Making Environment: Principal Actors and Processes

Applying the foregoing rights-orientation criteria to a state's external relations necessarily requires a proper appreciation of the prevailing operational environment in which decisions are made. The interplay between relevant actors and processes can influence decisively the role of human rights in the calculus of national interests, perceived and real, affecting foreign policy.

This paper will outline the *modus operandi* of salient aspects of governmental (executive, bureaucratic, legislative) and attentive public (media, non-governmental, private interest) roles in policy making from a rights-promotional perspective. Brief mention will also be made of the potential impact of the judicial process in that regard, despite the notions of its independence and neutrality in policy making.

The merit of this methodology is in facilitating the design of a framework intended for general application among diverse political systems. Further remarks on the "universality" of the framework will follow in the concluding segment (section III).

(a) Governmental Roles

Whatever the constitutional distribution of powers within a system, the executive and legislature traditionally exercise the dominant roles in foreign policy making. Each is contoured by national rules and conventions rather than being monolithic, but a number of generalizations in respect of rights-related decision making can be posited.

The executive (however constituted) tends to enjoy a critical role in at least three respects, albeit subject to confirmatory powers or other constraints vested in the legislature (or its equivalent). First, in the formal capacity to affirm state support for international instruments. Second, as the ultimate decision maker on policy issues where the implementation of human rights obligations is at stake. Third, in the capacity to launch initiatives at the national and transnational levels, thus focusing attention on the importance of human rights in relevant agendas.

To cite examples, from two radically different political systems: General Secretary Mikhail Gorbachev has significantly altered Soviet foreign policy affecting human rights within the context of *glasnost* in recent years, while the Carter administration's public commitment to making human rights the "soul" of American foreign policy in 1976 has had a profound impact on the national as well as international agendas, as suggested at the beginning of this paper. Both initiatives have required the executive to prevail over systemic resistance, in cooperation with other governmental and public actors.

The contribution—indeed leadership—that can be provided by the legislature in fashioning a human rights policy is evinced by the part Congress played in the Carter administration's efforts, as noted in a study by Salzburg and Young:

> It is clear that the Congress is capable of taking an active role in the implementation and protection of human rights . . . The parliamentary body has the opportunity to legislate the general guidelines for foreign policy. Looking back to 1973, it appears that Congress was at first looking for just that—the establishment of guidelines. However, the reluctance of the executive branch to accomodate congressional pressure led to firmer and more specific legislative mandates . . . Such a body, through controls over the purse and through legislative mandate can modify the behavior of the government in its representations to the international community.[52]

Of central importance in this connection is the process of *institutionalization*, aided by supporting legislation, which serves as an index of long-term policy commitment to promoting human rights. Without suitable entrenchment, which requires the legislative and bureaucratic actors to interact positively with the executive, the latter's role assumes an *ad hoc* character. Conversely, as suggested in the above quote, a reluctant executive can impede, if not thwart, legislative efforts. A Canadian instance of this occurred apropos relations with Latin America and the Caribbean during 1981-1982, when extensive reports by parliament recommending a greater role for human rights factors in Canadian development assistance and political links with those regions were largely ignored by the government at a critical point in their history.[53]

Nor can the vital role of bureaucratic actors in decision making by both the executive and legislature be underestimated, whether through the supply of information and analysis, in the competition for budgetary allocations among official departments, or in the actual execution of policy. In the final analysis, the successful institutionalization of policy mandates an active part by bureaucratic actors.

(b) A Note on the Judicial Process

The judiciary's interpretation of its own jurisdiction in matters engaging the respective functions of governmental actors in the policy process can self-evidently impact on that process. Contingent on the political system, the judiciary may thus influence human rights policy through rulings that directly involve international norms, or through the review of relevant national legislation (including challenges to official decisions).

The presumption at common law that domestic law will be consistent with pertinent international obligations has led British courts, for example, to rule the European Convention on Human Rights to be applicable domestically even without its incorporation in United Kingdom legislation.[54]

Also worth noting is American judicial activism in the human rights field, within a system that enshrines the mandate to review legislation in the courts. In the celebrated case of *Filartiga v. Pena-Irala* (1980), the New York Court of Appeals held that torture committed by the defendent in Paraguay was justiciable in the United States because it was a violation of customary international law.[55] A major contribution of the *Filartiga* decision was in signalling an avenue for activism within a domestic forum—with clear implications abroad. The fact that the lawsuit was brought by private individuals offers further encouragement for the prospects of action by non-governmental actors.

Canadian courts have historically shown a limited willingness to apply principles of international law not explicitly incorporated in national legislation;[56] but the new Charter of Rights and Freedoms has stimulated considerable debate, possibly presaging a change.[57] Insofar as Canadian jurisprudence reflects the influence of British and United States practice, the trends in those jurisdictions may also find resonance in creative judicial construction in this country.

(c) Attentive Public Roles

Surveys have indicated that only a fraction of the adult population falls within even a loose interpretation of "attentiveness."[58] But for present purposes, consideration need only extend to public segments distinguished by their articulated interest in issues that can affect the state's policies on international human rights.

These would include special interest groups (from ethnic to business lobbies), human rights organizations (national and international), policy research institutions (from university departments to "think tanks"), and the media (both reflecting and influencing the input of other actors and processes). Although human rights *ipso facto* concern all and sundry, the formulation and conduct of relevant policy is subject to all the standard dynamics of the foreign policy process. "Within the constraints of that process," it has been noted, "decision-makers apply human rights pragmatically (as trade-offs), inconsistently (in response to the pressure of demands) and rhetorically (by choice of definition and emphasis)."[59]

A principal determinant of the extent of "attentive public" influence within the prevailing political culture will be the degree of openness in the decision-making process. The need for some confidentiality and dispatch is ineluctable—while being a major constraint on effective judgement by non-governmental actors. Moreover, the consistency and continuity that are especially important in the foreign policy domain limit the desirability of full participation by what may be perceived as a capricious public.

But those arguments can and frequently do provide an expedient cover for the suppression of non-traditional criteria such as human rights in the national interest calculus. Without a measure of public accountability and transparency, "consistency" and "confidentiality" may become bywords for the *status quo* in external as in domestic policy. Indeed, the very notion of universality in human rights matters blurs the boundaries between domestic and foreign policy in the present context, suggesting that the principle of public participation in domestic affairs ought to extend substantially to questions of rights-orientation in external affairs.

Empirical data on the operative roles of attentive publics remain inconclusive even in the case of the United States, where their influence is most visible and profound.[60] Importantly, Congress has provided for formal input from human rights organizations like Amnesty International, the Red Cross, and the International Commission of Jurists in the implementation of legislation concerning foreign economic and military assistance.[61]

Submissions from assorted attentive publics also form a vital part of the parliamentary process in many countries—abetted by growing media coverage of rights-issues—though the precise impact thereof remains difficult to gauge. Official hearings on international human rights issues have gained currency in Canada in recent years, particularly on question of foreign aid, the "Helsinki process" of the CSCE, and *apartheid* in South Africa. Government consultations with Canadian human rights organizations in advance of the spring sessions of the Commission on Human Rights in Geneva have also become an annual feature.

"Without support," observes James Rosenau, "officials cannot be elected, dictators cannot dictate, opponents cannot oppose, policies cannot be implemented, goals cannot be achieved."[62] The domain of human rights policy is progressively becoming less of an exception in that regard.

III. A Framework for Appraising Human Rights Policy Orientation

The preceding survey of instrumentalities, actors, and processes is converted into a "simple matrix" below, to facilitate a comprehensive appraisal of foreign policy orientation. The matrix is intended less as a set of compartments for mechanical application than as a systematic guide for *narrative* analysis. As such, it supports a *normative* critique concerned about the realization of particular (human rights) values.

A number of existing analytical modalities have informed the composition of the matrix,[63] of which two require specific mention. Richard Falk's authoritative study of the "Evolution of American Foreign Policy on Human Rights: 1945-1978" offers a "checklist" that combines policy and implementation measures with relevant fora or "settings" (diplomatic, governmental).[64] Like most other human rights policy models, however, Falk's does not address the role of non-governmental publics, an omission that ignores what Pratt has described as the "counter-consensus."[65] The checklist is also an essentially *static* model, not concerned with the range of possible interactions among its components.

By contrast, Brecher, Steinberg, and Stein's "framework for research on foreign policy behavior" (not specifically addressed to human rights) centers on the "notion of flow and dynamic movement" within a system constantly absorbing demands and generating decisions.[66] Feedback among the various actors and processes is well accounted for by the proposed framework.

But an exclusively *behavioural* model, focused on the uses of political power rather than on its value impact, is surely inappropriate to a critique of human rights orientation.[67] Although mindful of the dynamics of policy making (covered especially in section II above), the present study, as already indicated, is concerned primarily with the correspondence of policy with pertinent norms, deemed to be fundamental to a society's general welfare.

The ensuing matrix needs to be applied accordingly. Policy components are arranged along the vertical axis in an approximate hierarchy; "declaratory" elements (public statements, affirmation of instruments) ascend into "actual" (multilateral action, bilateral military relations), in estimation of the relative level of demands on policymaking. This order is presumptive, not rigid, and subject to empirical adjustment.

The roles of actors and processes (governmental, judicial, attentive public) arranged along the horizontal axis of the framework are to be assessed in response to each of the policy elements or indices. A number of expository questions may be addressed:

1. As to the actual policy positions (official or otherwise) adopted on particular issues, in regard to substance and attendant policy strategies, given the actor's capacity to influence policy.
2. As to the justifications or rationales advanced for the above positions.
3. As to the real value attached by the actor to human rights considerations affecting relevant policy.
4. As to effective input from other actors and processes that may have influenced (1), (2), and (3), above, and how this reflects on the overall system.

These inquiries also facilitate a wider application of the matrix, allowing for pertinent structural variations among political systems. Similarly, the range of supra-national considerations incorporated among the policy indices, from the affirmation of international norms to participation in UN economic and military sanctions, reinforces the potential for broad critical application. As a corollary, *comparative* analysis of rights-orientation is possible as between political systems.

In addition, *internal* comparison on different issues within the same political system can be undertaken. Thus, the matrix may be applied to a comparative empirical appraisal of, say, Canadian foreign policy with respect to Central America and towards *apartheid* in South Africa.[68] Such application can also be on a thematic (self-determination or religious freedom, for example) rather than on a country or regional basis.

Finally, the matrix imposes no time-frame constraints. It is as susceptible to a long-term or historical perspective as to a short-term appreciation of rights-orientation in foreign policy.

Simple Matrix for Appraising Rights-Orientation in Foreign Policy

Policy Elements (Ascending Order of Significance)	Principal Actors & Interactions					
	Executive	Legislature	Judiciary	Lobbies	NGOs	Media
Public Statements on Human Rights Policy Questions						
Affirmation of International Human Rights Instruments						
Initiatives at the UN and Regional Fora						
Action at International Financial Institutions						
Friendly Inter-State Relations						
Aspects of Economic Relations						
Aspects of Military Relations						

Notes

1. See generally J. Fawcett, "Human Rights—A New Ideology," *International Relations* (London) 8 (May 1986), 494; V.P. Nanda, et al. (eds.), *Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies* (Boulder, Col.: Westview Press, 1981).

2. "Human Rights One of the Most Complex Foreign Policy Issues," speech by Secretary of State for External Affairs Don Jamieson, March 16, 1977, *Statements and Speeches*, No. 77/5 (Dept. of External Affairs); "Human Rights and International Legal Obligations," statement by Secretary of State for External Affairs Mark MacGuigan, February 2, 1981, *Statements and Speeches*, No. 81/3 (Dept. of External Affairs); "The Canadian Approach to the International Promotion and Protection of Human Rights," Secretary of State for External Affairs Mark MacGuigan, August 31, 1982, *Statements and Speeches*, No. 82/23 (Dept. of External Affairs).

3. R. Matthews and C. Pratt, "Human Rights and Foreign Policy: Principles and Canadian Practice," *Human Rights Quarterly* 7 (1985), 159.

4. *Nuclear Tests (Australia v. France)* and *Nuclear Tests (New Zealand v. France)*, 1974 ICJ Reports, 253 and 457, at 267-68, 472-73. For a critical view of the implications, see A. Rubin, "The International Legal Effects of Unilateral Decisions," *American Journal of International Law* 71 (1977), 1.

5. P. Derian, "Human Rights in American Foreign Policy," *Notre Dame Lawyer* 55 (1979-1980), 264, at 271. Derians's remarks, however, were premised on human rights being "a consistent part of [the Carter administration's] official contacts with other governments," a circumstance she considers as being uncharacteristic of previous administrations.

6. See D. Weissbrodt, "The Role of Nongovernmental Organizations in the Implementation of Human Rights," *Texas International Law Journal* 12 (1977), 293.

7. Under such agreements as the Hague Conventions of 1899 and 1907, and the 1949 Geneva Convention (humanitarian constraints in war); the Kellog-Briand Pact (non-use of force); the 1925 Geneva Gas Protocol; and minorities treaties respecting Southern and Eastern Europe. See generally L. Sohn and T. Buergenthal, *International Protection of Human Rights*

(Indianapolis/Kansas City/New York: Bobbs-Merill, 1973), Ch. IV.

8. United Nations, *The International Bill of Human Rights* (New York, 1978). See J. Humphrey, "The International Bill of Rights: Scope and Implementation," *William and Mary Law Review* 17 (Spring 1976), 527; T. Meron, *Human Rights Law-Making in the United Nations—A Critique of Instruments and Processes* (New York: Oxford University Press, 1987).

9. Succinct account in United Nations, *The United Nations and Human Rights* (New York, 1978). See also P. Sieghart, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights* (Oxford and London: Oxford University Press, 1985).

10. Detailed in Sohn and Buergenthal, *supra* (note 7), Ch. VII and VIII; Sieghart, *supra* (note 9). See further *infra* (notes 17-19).

11. A. D'Amato, "The Concept of Human Rights in International Law," *Columbia Law Journal* 82 (1982), 110; L. Henkin, "Human Rights and 'Domestic Jurisdiction,'" in T. Buergenthal, (ed.), *Human Rights, International Law and the Helsinki Accord* (Montclair/New York: Allanhead, Osmun/Universe Books, 1977), 21.

12. The committee was created under article 28 of the covenant itself. Individual complaints thereto, however, can only be made under the protocol (as per article 2).

13. See Meron, *supra* (note 8); E. Schwelb, "The International Measures of Implementation of the International Covenant on Civil and Political Rights and of the Optional Protocol," *Texas International Law Journal* 7 (1977), 141.

14. United Nations, *Human Rights International Instruments—Signatures, Ratifications, Accessions, etc., 1 September 1983*, UN Doc. ST/HR/4/Rev.5 (New York, 1983).

15. *Supra* (note 11), at 30-31.

16. Some 40 states have ratified the Optional Protocol. On the "1503 procedure," see A. Cassesse, "Two United Nations Procedures for the Implementation of Human Rights," in *International Human Rights Law and Practice*, ed. by J.C. Tuttle (Philadelphia: American Bar Association, 1978), 39.

17. In force since 1953, the European Convention is regarded as part of the most sophisticated system of human rights protection today. Article 25 allows for individual complaints—unique for a regional convention.

18. In force since 1979, the Inter-American Convention duplicates many of the operational provisions of its European counterpart. Its jurisprudence is rapidly gaining authority. See T. Buergenthal, "The Inter-American System for the Protection of Human Rights," in *Human Rights in International Law: Legal and Policy Issues*, ed. by T. Meron (Oxford: Clarendon Press, 1984), Vol. II, Ch. 12.

19. The 1981 charter (also referred to as the "Banjul Charter") elicited the requisite number of ratifications (26) sooner than expected, coming into force in October 1986 (the Inter-American Convention took 10 years, the European Convention three years). A principal departure from other regional instruments is the charter's emphasis on collective ("peoples' ") rights in consonance with African socio-cultural norms. See R. Gittleman, "The African Charter on Human and Peoples' Rights: A Legal Analysis," *Virginia Journal of International Law* 22 (1982), 667; R.N. Kiwanuka, "The Meaning of 'People' in the African Charter on Human and Peoples' Rights," *American Journal of International Law* 82 (1988), 80.

20. Signed in August 1975 at Helsinki, the final act is not a treaty; but it does generate legal effects in various ways, not least in respect of the human rights provisions contained in "Basket 3." See Buergenthal, *supra* (note 18); A.C. Kiss and M.F. Dominick, "The International Legal Significance of the Helsinki Final Act," *Vanderbilt Journal of Transnational Law* 13 (1980), 293.

21. See D. Gisselquist, *International Monetary Fund Relations with South Africa*, study for the United Nations (New York, 1981), at 13.

22. See Center for International Policy (Washington, D.C.), *International Policy Report*, April 1984, at 3-4. Two UN General Assembly resolutions—36/172D (17 Dec. 1981) and 37/69A (9 Dec. 1982)—opposing the credits were passed by large majorities.

23. Worth US $206 million in all. See Center for International Policy, *International Policy Report*, March 1983, at 6-7.

24. Ibid.

25. "U.S. Supports World Bank Loan to Chile," *The Washington Post*, June 19, 1985, A28.

26. *Articles of Agreement* (as amended Dec. 17, 1965), art. 5(3). See also IMF, *Articles of Agreement*, art. 5(3) (c); *Agreement Establishing the Inter-American Development Bank*, art. 3(1).

27. Cited in Bonner, "Economic Problems Tied to Apartheid," *The New York Times*, November 17, 1983, D6. See generally R.J. Myers (ed.), *The Political Morality of the International Monetary Fund: Ethics and Foreign Policy*, vol. 3 (New Brunswick, N.J.: Transaction Books, 1988).

28. Center for International Policy, *supra* (note 23). Continuing inconsistency in this regard provoked editorial criticism in *The Globe and Mail*, March 12, 1984 ("Aid for the Unworthy").

29. International Financial Institutions Act, 1977 (in particular section 701). On this and subsequent U.S. enactments, see Center for International Policy, "Enforcing Human Rights: Congress and the Multilateral Banks," *International Policy Report*, February 1985.

30. U.S. Congress, House Sub-Committee on International Development Institutions and Finance, of the Banking, Finance and Urban Affairs Committee, *International Development Institutions Authorizations: Hearings on Human Rights 5262*, 95th Congress, 1st Session, March 23, 1977, at 88.

31. UN General Assembly resolution 2625(XXV) (10 October 1970), GAOR Supp. (No. 28) at 121, UN Doc.A/8028 (1970).

32. E. Luard, "Human Rights and Foreign Policy," *International Affairs* (London) 56 (Autumn 1981), 579, especially at 599-600. But others have noted that the international community—including the Carter administration—*knew* of the atrocities, and failed to respond. See W.F. Buckley, "Human Rights and Foreign Policy: A Proposal," *Foreign Affairs* 58 (Spring 1980), 775, at 792. See also W. Shawcross, *The Quality of Mercy—Cambodia, Holocaust and Modern Conscience* (New York: Simon & Schuster, 1984).

33. A classic instance is the support for anti-*apartheid* economic sanctions among the majority of black South Africans, notwithstanding the price to themselves. See especially M. Orkin, *Disinvestment, the Struggle and the Future—What Black South Africans Really Think* (Johannesburg: Ravan Press, 1986).

34. C.L. Brown-John, *Multilateral Sanctions in International Law* (New York: Praeger, 1975); J. Barber and M. Spicer, "Sanctions Against South Africa—Options for the West," *International Affairs* (London) 55 (July 1979), 385; "When Sanctions Make Sense," *The Economist*, August 3, 1985 (offering an historical analysis).

35. Cited in W. Minter, "South Africa: Straight Talk on Sanctions," *Foreign Policy* 65 (Winter 1986/1987), 43. See also *The Economist, supra* (note 34).

36. Quoted in J.P. Pronk, *infra* (note 37), at 37.

37. J.P. Pronk, "Human Rights and Development," *Review of the International Commission of Jurists* (1977), at 38; cited in Cassesse, *supra* (note 16), at 43-44.

38. Section 116(a). See Cassesse, *supra* (note 16), 42-44; J.M. Howell, "Socioeconomic Dilemmas of U.S. Human Rights Policy," *Human Rights Quarterly* 3 (1981), 78.

39. According to the government's *Elements of Canada's Official Development Assistance Strategy 1984*, although "gross violations should not be endorsed . . . by the maintenance of a substantial ODA programme . . . populations already suffering because of these violations should not be doubly penalized by the withdrawal of ODA programmes." Former Prime Minister Trudeau told the House of Commons in 1977 that Canada "has not made it a condition of assistance to the starving people in the Third World that their government be above reproach." Quoted in T.A. Keenleyside, "Foreign Aid and Human Rights," *International Perspectives* (March/April 1987), 15, at 16. See also I. Brecher, "Foreign Aid and Human Rights," *International Perspectives* (September/October 1985), 23.

40. Canadian International Development Agency, *Sharing Our Future—Canadian International Development Assistance* (1988), at 27-31, echoing in many respects the recommendations of the Commons' Standing Committee on External Affairs and International Trade (chaired by William Winegard) in May 1987—*For Whose Benefit*—at Ch. 3; also *infra* (text accompanying and following note 51). Parliamentary committees have been urging such linkage at least since 1981-1982: see the author's doctoral thesis, *supra* (opening note), at Part 3:B:6 (Central America). CIDA's first explicit policy linkage with human rights in practice came against Haiti in July 1988,

followed by an update: "Ottawa Tightens Ban on Aid to Protest Haiti Rights Abuse," *The Globe and Mail*, September 15, 1988.

41. *Supra* (note 31), pursuant to the principle of noninterference in the UN Charter.

42. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence, UN General Assembly resolution 2131, 20 GAOR Supp. (No. 14) at 11, UN Doc. A/6014 (1965); and Permanent Sovereignty Over Natural Resources, UN General Assembly resolution 3171, 28 GAOR Supp. (No. 30) at 3, UN Doc. A/9030 (1973).

43. O. Schachter, "International Law Implications of U.S. Human Rights Policies," *New York Law School Law Review* 24 (1978), 63, at 84.

44. Cited in John Ferguson, "Time to Remember: Arms Trade Big Business in Canada," *The Gazette* (Montreal), November 10, 1987, C-1.

45. See generally United Nations, *Economic and Social Consequences of the Arms Race* (1978), UN Doc. A/32/88/Rev. 1; A. Pierre, "Arms Sales: The New Diplomacy," *Foreign Affairs* 60 (Winter 1981/82), 266; A.B. Sajoo, "Human Rights Perspectives on the Arms Race," *McGill Law Journal* 28 (1983), 628.

46. Since 1985: see William Marsden, "Why Canada Is a Big-League Arms Pedlar," *The Gazette* (Montreal), November 22, 1986, A-1; E. Regehr, *Arms Canada* (Toronto: James Lorimer, 1987).

47. Under regulations pursuant to the Export and Import Permits Act, "military, military-related and strategic equipment" ("Group 7" of the "Export Control List") cannot be exported without a licence, which will not be granted in certain instances. Under revised rules in 1986, sales to governments with "a persistent record of serious violations" will be curtailed, *subject to the presence of a "reasonable risk that the goods might be used against the civilian population"* (my emphasis): Department of External Affairs, "Export Control Policy—Background Paper," *Communique*, No. 155, September 10, 1986.

48. See citations *supra* (note 46). No provisions exist for monitoring the accuracy of licensee declarations as to the purported destination of arms exports.

49. In earlier nonbinding incarnations between 1973 and 1978, the enactment was habitually flouted by the executive, eventually prompting the Congress to confer full statutory force on the amendment. See S. Cohen, "Conditioning U.S. Security Assistance on Human Rights Practices," *American Journal of International Law* 76 (1982), 246.

50. Under sections 710 (a) and (c).

51. Winegard Committee report, *supra* (note 40), at 31.

52. "The Parliamentary Role in Implementing International Human Rights," *Texas International Law Journal* 12 (1977), 251, at 278. In the Canadian context, see C. Nolan, "The Influence of Parliament on Human Rights in Canadian Foreign Policy," *Human Rights Quarterly* 7 (1985), 373.

53. *Supra* (note 40). See also C.J. Morales, "A Canadian Role in Central America," *International Perspectives* (January/February 1985), 12, especially at 13.

54. See C.S. Watson, "The European Convention on Human Rights and the British Courts [Comments]," *Texas International Law Journal* 12 (1977), 61-73.

55. 573 F. Supp. 860 [1984]. See further J.M. Blum and R.G. Steinhardt, "Federal Jurisdiction over International Human Rights Claims: The Alien Tort Act after Filartiga v. Pena-Irala," *Harvard International Law Journal* 22 (1981), 53.

56. See R. Macdonald, "The Relationship between International Law and Domestic Law in Canada," in *Canadian Perspectives on International Law and Organization*, ed. by R. Macdonald et al. (Toronto: University of Toronto Press, 1974), 89; M. Cohen and A. Bayefsky, *infra* (note 57).

57. J. Claydon, "International Human Rights Law and the Canadian Charter of Rights and Freedoms," *Buffalo Law Review* 30 (1981), 727; M. Cohen and A. Bayefsky, "The Canadian Charter of Rights and Freedoms and Public International Law," *The Canadian Bar Review* 61 (1983), 265.

58. J. Rosenau, *Citizenship between Elections* (New York: The Free Press, 1974), Chs. 1-2. It is revealing that a Canadian Gallup poll found 52 per cent of the public to be unaware of the existence of policy of segregation (*apartheid*) in South Africa in July 1985; the figure dropped to 34 per cent in September 1985: "Awareness of Apartheid Rises to 66 Per Cent," *The Gazette* (Montreal),

November 4, 1985, A-10. See generally D. Munton, "Public Opinion and the Media in Canada from Cold War to Detente to New Cold War," *International Journal* 39 (1983-1984), 171.

59. O. Marenin, "Influencing U.S. Foreign Policy on Human Rights," *Denver Journal of International Law* 13 (Fall 1984), 237, at 239.

60. Ibid.; D. Forsythe, *Human Rights and World Politics* (Lincoln, Neb./London: University of Nebraska Press, 1983), Ch. 4, especially at 152-57.

61. In respect of bilateral economic aid, under section 116(c) (1) of the Foreign Assistance Act as amended; and under section 701(e) of International Financial Institutions Act of 1977, in respect of multilateral credits.

62. *Supra* (note 58), at 1.

63. M. Brecher, B. Steinberg, and J. Stein, "A Framework for Research on Foreign Policy Behavior," *Journal of Conflict Resolution* 13, 75; R. Falk, "Evolution of American Foreign Policy on Human Rights: 1945-1978," in *Assessing Human Rights Conditions*, ed. by J. Dominguez (New York: McGraw-Hill, 1979), 27; Falk, R. et al., *Human Rights and State Sovereignty* (New York: Holmes and Meier, 1981), Ch. 5; R. Johansen, *The National Interest and the Human Interest* (Princeton: Princeton University, 1980), Ch. 1; F. Kratochwil, "Alternative Criteria for Evaluating Foreign Policy," *International Interactions* 8 (1981), 105; B.G. Ramcharan, "Evaluating Human Rights Performance: Some Relevant Criteria," *Human Rights Reporter* 7 (Sept.-Oct. 1981), 12.

64. *Supra* (note 63).

65. C. Pratt, "Dominant Class Theory and Canadian Foreign Policy: The Case of the Counter-Consensus," *International Journal* 39 (1983-1984), 99.

66. *Supra* (note 63), at 80.

67. See especially Johansen, *supra* (note 63), attacking the "excessive emphasis" in traditional behavioralist studies on the processes rather than ends of policy, to the detriment of its role as a "value-realizing process" (at 20). Similar conclusions are drawn in Pratt, *supra* (note 65).

68. As done by the present author, doctoral thesis *supra* (opening note), parts 2 (South Africa) and 3 (Central America).

The Universal Declaration and Beyond: Human Rights and International Action in the 1990s

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Résumé

Cet article démontre que les droits de la personne sont maintenant largement acceptés comme un aspect légitime de la politique extérieure et des relations internationales et que, conséquemment, il est temps de modifier le centre du débat sur les droits de la personne. La communauté internationale devrait désormais se concentrer sur les aspects de mise en application, nommément, sur la façon de donner effet aux règles développées depuis quarante ans par les Nations Unies et d'autres organismes. Nous avons donc besoin d'une stratégie de mise en oeuvre, ayant pour source deux critères importants: l'efficacité et l'accessibilité.

De toutes les composantes qu'on pourrait inclure dans une stratégie, cinq d'entre elles s'imposent immédiatement à l'esprit: une approche stricte dans la définition des normes internationales; l'utilisation et le raffinement continuel de l'initiative diplomatique; l'instauration de programmes destinés à développer dans un sens positif les institutions consacrées aux droits de la personne; de nouvelles initiatives dans le domaine de l'information publique; enfin, l'utilisation de mécanismes formels dans la résolution pratique des problèmes concrets. Ces cinq composantes devraient être développées

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au cours de la prochaine décennie et on devrait chercher à établir un consensus quant à leur valeur, en approfondissant le débat autour des droits de la personne par leur mise en application plus complète. L'auteur reconnait que ces cinq composantes sont substantiellement différentes en théorie et en pratique, voire même contradictoires, dépendamment des situations abordées. Cependant, il pense qu'une telle approche, à facettes multiples, des droits de la personne est réaliste, vu la variété des situations rencontrées couramment, de même que le besoin de faire face effectivement à tous ces problèmes.

Four decades have passed since the United Nations' adoption of the Universal Declaration of Human Rights. In that time, major philosophical and practical issues surrounding human rights and international relations have been addressed in an impressive and growing body of precedents and doctrine. The notion of absolute state sovereignty has been substantially modified to embrace the concepts of supra-national rights of petition and international scrutiny. A body of law and practice in the area of international human rights has been built up, expanded, and put into effect. Protective mechanisms have been developed to attempt to safeguard individuals and groups in accordance with the transcendent principles first enunciated in the Universal Declaration in 1948. Although many questions remain controversial and their answers elusive, the legitimacy of human rights as a primordial theme of international relations is now beyond question. In looking at the years immediately ahead, the question now dominating the international human rights agenda is the critical issue of implementation. As Stephen Lewis has put it, "the question is then, with this body of law, what now?"[1]

Despite its deceptive simplicity, this is not an easy question. There is substantial disagreement over defining the limits of the possible in an area as sensitive and volatile as human rights. We still lack consensus in determining where and to what extent human rights considerations are valid and important as an aspect of foreign policy. There are real difficulties in pushing a slow and perplexing international system as hard and as fast as most human rights advocates would wish. Moreover, even if we obtain agreement on abstruse issues of principle and international law, the practical problems of effecting fundamental change in a positive direction in many diverse situations throughout the world are still daunting.[2]

When approaching the question of possible next steps, a number of considerations come to mind. First, human rights is a relatively recent subject on the international agenda. On many issues, states, international organizations, and non-governmental organizations are only groping their way tentatively towards defining workable policy approaches. A phase of experiment or cautious incrementalism should not be considered unusual. Second, foreign policy is only one aspect of the international human rights equation. As Jack Donnelly has recently argued, in asserting that human rights is ultimately a national rather than international issue, substantial attention has to be devoted to "the interaction of national and international factors in the success or failure of international initiatives."[3] Third, whatever the merits of international action, successes in individual cases and situations are bound to be slow in evolving and consolidating. If these considerations are valid, pursuing human rights in a concerted fashion demands a realistic approach and its application over a lengthy span of time.

Forty years after the adoption of the Universal Declaration, what appears to be needed is less a philosophical justification than a coherent focus on issues for the next decade. We need to turn from arguing the merits of human rights as a foreign policy issue to the more pressing problems of giving effect to the principles already developed by the international community. In short, we need to develop a strategy, an inter-related group of objectives and targets which could be embraced by a variety of like-minded governments and non-governmental organizations, acting separately or in tandem in the years ahead. Its component elements would need to satisfy, at a minimum, two basic criteria: effectiveness and attainability.

Strategic thinking, with its emphasis on issues of timing and targets, is troublesome to many. A ten-year time-frame, for example, may seem an unconscionably lengthy period, given the compelling immediacy of the problems which confront us daily. But it stems from a realistic appraisal of the slowness of the international system and the need to mobilize international public opinion and a variety of domestic audiences incrementally. Some expectations will also be disappointed in the moral selectivity inherent in choosing among a wide range of possible objectives and targets. But there is greater danger in an unfocused approach and its diffusion of effort and resources. Framing a coherent strategy for international action, whatever its difficulties, offers the best prospect of taking the global community one step further towards reconciling the current wide divergence between professions of respect for human rights and their maintenance in practice.

A strategy in the area of international human rights, while acknowledging the diversity of the subject, must also be based upon a few well-chosen, central pillars which offer the greatest prospects of advancement over the course of the next few years. It need not shy away from difficult or controversial issues; indeed, they are inherent in the subject. But the criteria of effectiveness and attainability demand that we give preference and closest attention to those issues critical to long-term success. Given recent experiences in both bilateral and multilateral human rights issues, five basic components come readily to mind: a strict approach to future international standard-setting activities; the continued refinement and use of diplomatic initiatives; the establishment of programs to help foster the development of human rights institutions in a constructive way; new initiatives in the area of public information activities, and effective formal or informal mechanisms emphasizing pragmatic problem-solving for concrete human rights cases. The common element of these components is the integration of human rights and foreign policy across a range of bilateral and multilateral activities in a realistic, coherent way. But the five components are essentially different, and impinge upon international relations in differing ways.

The Components of a Strategy

1. *Standard-Setting*

Standard-setting has been the great strength of the multilateral world, especially the United Nations, for the past 40 years. In developing principles which set norms for states with respect to the treatment of their own subjects (as contained, for example, in the Universal Declaration, the human rights covenants, and other instruments), the United Nations has bridged philosophical, moral, cultural, and legal chasms which once divided states in the field of human rights. Some five years ago, it was assumed that standard-setting as a discrete area of multilateral endeavour was nearing its natural end. Plainly put, it appeared that there were few new declarations or conventions to negotiate, or that those topics still awaiting a standard-setting exercise were too difficult to tackle.[4] Within the past few years, however, standard-setting has re-emerged as an item of interest, and the agendas of multilateral bodies in the human rights field are now crowded with drafting exercises.[5]

Recent experience suggests that standard-setting still has a vital role, especially as one component of a larger human rights strategy. But in order to frame standard-setting activities in the potentially most effective manner, several considerations bear examination. Attempts to tackle new subjects, for example, should focus on those areas where current standards are either deficient or non-existent, such as the fields of minority rights or the rights of indigenous populations. Conversely, governments should resist whenever possible the temptations of new exercises in "trendy" areas, where the prospect of meaningful progress is limited and where there is clear potential for degrading the vocabulary of human rights through vague or ill-considered acceptance of claims to new rights.[6] Governments will need to be doubly wary when the objective of proponents of such exercises is more clearly related to gaining publicity than to building a coherent body of international rules.

Similarly, governments and inter-governmental bodies should look critically at proposals to upgrade United Nations declarations into more binding convention form, unless there are prospects that standards could be enhanced and effective implementation machinery developed. In the case of a proposed convention on religious intolerance, for example, it would be imprudent to embark upon the negotiation phase until the implications of its potential usefulness as an implementation vehicle were fully explored. Similarly, because consistency of standards and interpretation is now a matter of increasing concern to many states, especially given the entry into force of many new international conventions in the past decade and more, any new standard-setting exercises should, as much as possible, use as their points of departure existing international standards or at least appropriate portions of internationally-agreed phraseology. By starting with agreed language and working towards its enhancement and upgrading, years of futile negotiations might well be avoided.

In articulating a long-term strategy in the area of standard-setting, some perplexing problems will need to be confronted. Central among these is the need to build some consensus on the areas where increased efforts at setting new standards are warranted. Clearly, the international community should avoid future drafting exercises similar to work now under way on a draft convention on migrant workers, which has suffered through negotiation in an inappropriate forum, inadequate preparation, and a high degree of overt politicization. Governments, in particular, have some responsibility in lowering the expectations of those persons and groups who tend to see international declarations and conventions as an ideal "quick fix" for particular human rights problems. For the most part, standard-setting is slow, arduous, and hardly the best way to pursue past grievances. Nor is it the most effective means of gaining a hearing for current problems. Governments concerned about standard-setting will also soon be compelled to face the increasingly evident failure of the treaty-based monitoring bodies, whose work-loads, structures, financing, and secretariat support have proven to be woefully deficient and defective.[7]

Standard-setting is a central component of any long-term human rights strategy because it establishes the ground rules. It lays down the basic minimum standards of treatment which persons and groups can demand of their governments. It places constructive pressure on governments to conform to widely-agreed international norms of behaviour. It provides a compelling counter-weight to claims of "cultural relativism," which purport to permit flexibility of norms depending upon extraneous economic, social, or political factors. And it provides the basis for assessing bilateral and multilateral action on specific country situations by constituting a framework for judging adherence to accepted international norms. Notwithstanding the tactical difficulties involved in implementing a coherent approach to standard-setting activities, it is one of the essential components of an effective, attainable human rights program for the next decade.

2. *Diplomatic Initiatives*

A second component of an overall strategy should address diplomatic contacts among states and the critical issue of human rights as an element in international relations. Over the course of the past decade, human rights has become firmly entrenched as an issue of state-to-state dialogue and therefore an integral (albeit controversial) part of foreign policy. In its traditional forms, diplomatic action between states has consisted, for the most part, of expressions of concern about human rights cases or situations, actions generally characterized as "representations" or "protests." The parallel activity at the multilateral levels consists of statements, or the presentation of resolutions, in various United Nations bodies. Collectively, they are part of the lexicon of actions, ranging from quiet urgings to economic sanctions, whereby one state endeavours to change the behaviour of others by using its influence or perceived leverage.

In its most visible form, the public strategy generally known as the "mobilization of shame" has had a long but inconsistent track record. The United Nations, for example, has tackled a few prominent cases over the past decade, and has made substantial progress in ensuring that states cooperate in UN investigatory procedures.[8] But there is still no remedy for the problem of non-cooperation, and the procedures for multilateral fact-finding and conciliation have not evolved as some of their earlier proponents once hoped. Moreover, there has been a growing recent trend towards regional solidarity within some of the UN's five geographic groups which has limited the effectiveness of potential multilateral action. It is now clear that this type of high-profile UN initiative, while appropriate to certain situations of gross and persistent violations of human rights, is essentially ineffective in a larger range of situations where more varied or subtle approaches are warranted.

Over the past decade, there has been growing and substantial emphasis by many countries, including Canada, on the importance of human rights as a dimension in the conduct of their foreign affairs.[9] As a consequence, diplomatic initiatives in the area of human rights have become more varied and regularized, addressing larger numbers of situations and cases through various means both public and private. The importance of signs of visible commitment has grown, and such activities as attending commemorative events or observing demonstrations have become key ways for one country to signal to another government its concerns and attitudes toward human rights. Financial support for human rights organizations, legal reform movements, or even opposition political groups in other countries, while clearly a problematic and difficult step for governments, has provided a more tangible expression of concern in many situations. The key issue for governments is no longer whether human rights concerns should be addressed in the context of bilateral or multilateral relations. Rather, the issues are ones of timing and technique, involving decisions of judgment as to the most effective means of pressing forward on particular cases and situations.

With the greater sophistication of diplomatic initiatives over the past few years has also come a sounder public awareness of opportunities and constraints. A decade ago, for example, many individuals and non-governmental organizations advocated breaking diplomatic relations and cancelling aid programs as weapons in the human rights arsenal, particularly when faced with situations of gross abuse. Now it is acknowledged that diplomatic relations play a wider role than merely as a forum for governmental contact. Indeed, some form of relations, however lacking in cordiality, is the basis for other programs instrumental to success in the area of human rights and to helping the victims of human rights violations. The provision of development assistance, in turn, is a complex and subtle issue, involving not only the question of a country's aid eligibility, but how assistance programs are channeled, their target groups, and the levels of assistance envisaged. All of these issues—from the quality and content of political relations to the substance of the aid program—are linked to human rights performance in subtle but different ways.

In general terms, diplomatic initiatives in the area of human rights need to be multi-faceted, open to a variety of tactics, depending upon the situation addressed. There is therefore no catalogue of effective measures or a quick guide to the use and abuse of each one. Nor is there an accepted "grid system" or computer formula to offer guidance in what is essentially untested terrain. Some indication of the range of possible measures has recently been assembled by the North-South Institute in a survey of human rights and Canadian policy towards developing countries.[10] If these and other measures are to be deployed successfully and effectively, there are common underlying criteria which are keys to implementation. Human rights questions, for example, must be approached on their own merits, and must be seen as stemming from an accepted, legitimate commitment to human rights as part of a state's wider foreign policy framework. When concern for human rights on the part of a state can be dismissed as reflecting a more pressing political, strategic, or economic grievance, initiatives are bound to fail. Similarly, representations on human rights matters, in order to avoid accusations of cultural imperialism, must be rooted in accepted norms of international law and practice rather than in one state's subjective judgment as to what is right or wrong. Lastly, a credible policy towards human rights must be supported and sustained by credible policies in other areas, such as development assistance or refugee policy, which are seen as forming part of a global commitment to social justice.

Diplomatic initiatives—whether bilateral or multilateral—have traditionally enjoyed the highest profile of actions in the human rights field. There is little doubt that this area is also the most controversial and confrontational, particularly in an international state system which places a premium on healthy state-to-state contact and which views with distaste the more extreme and unworkable concepts of sanctions, leverage, and linkage. Many states resent expressions of concern by other countries, and reject representations as interference in their internal affairs. The implication that a foreign power is in a better position than a country's government to assess what is best for the latter's subjects is, in itself, a powerful irritant triggering resentment and hostility. Some of these initiatives are also the source of the greatest distrust and misunderstanding between governments and their non-governmental sectors, because they generally speak for two distinct types of constituencies and employ two different strategies of action. But the confrontational nature of human rights is no grounds for shying away from the state-to-state debate. Similarly, although there are no easy answers to meeting the high and often exaggerated expectations of single-interest constituencies in many Western countries, the imperatives of finding solutions and seeking fundamental change are well worth the risks of misunderstanding.

3. *Support for Institutional Development*

A third component of a human rights strategy is fostering the institutional mechanisms which support human rights in a positive, constructive manner. Over the past decade, there has been a growing recognition that many human rights abuses stem from institutional deficiencies in the structures of many countries, particularly but not exclusively in the developing world. The process of encouraging rapid economic growth or of promoting national integration has, in many cases, led to weaknesses in national structures or lack of attention to the human dimension of change. The punitive approach to human rights, especially the strategy of embarrassing or isolating countries with these types of problems, has done little to come to grips with the central difficulties faced by some governments, which do not necessarily have the expertise or resources to implement new standards of human rights, even when they demonstrate a willingness to do so. An overall strategy seeking to address global human rights problems must clearly confront these difficulties with creative solutions.

In the past few years, both bilateral and multilateral avenues have opened up new possibilities for constructive institution-building in the area of human rights. Many states with development programs have integrated human rights more closely into their bilateral planning cycles. At one level, the integration of human rights and development retains a punitive aspect, namely, that countries violating human rights in a gross and persistent manner can be precluded from government-to-government assistance or from the benefits of all development efforts in extreme cases. But different considerations are applicable to states in other situations, where human rights concerns can be directly addressed through programs targeted to individual deficiencies and requirements.[11] Judicial institutions, law schools, and police and other law enforcement agencies are examples of areas where development programs can be identified with maximum impact for longer-term respect for human rights.[12] The newly created International Centre for Human Rights and Democratic Development, to be funded by the Government of Canada, may well become a focal point for framing policies and programs which achieve these types of tangible human rights objectives.

In the delicate field of integrating development and human rights, most donor governments have found that the most effective means of achieving their objectives is in establishing a partnership with the non-governmental sector.[13] NGOs are capable of marshalling considerable technical expertise in fields relevant to human rights, and they can generally do so much more quickly and directly than can governments. Because of their grass-roots experience, many non-governmental organizations are capable of responding realistically and effectively to the perceived needs of communities and social organizations.[14] In those countries where human rights violations are serious, and where the recipient governments are either actively hostile or passively resistant to human rights projects, working with the NGO sector helps to establish distance between donor and recipient governments, thus avoiding the sense of "legitimacy" that often comes from an unduly close relationship on a government-to-government level.

In its recent aid strategy, *Sharing Our Future*, the Canadian government pointed to new directions in the area of human rights and development assistance. Human rights concerns will in future be an important element in decisions regarding aid eligibility, and the cabinet will receive information on an annual basis on which to base its decisions and approaches. Levels of assistance, the channels through which official development assistance is provided, and the nature of Canadian aid programs will also be considered in light of human rights factors in each partner country. While integrating human rights and development will require a number of years of implementation, as well as considerable groundwork in subsidiary policy areas, *Sharing Our Future* represents the most definitive statement to date on the importance of reflecting fundamental values in a key aspect of Canada's foreign policy.

The multilateral arena has only recently taken the most tentative steps towards integrating development and human rights. For the most part, multilateral programming agencies such as the United Nations Development Program or funding vehicles such as the World Bank have been anxious to avoid overt discussion of human rights within their governing bodies, out of justifiable fears, borne of early experiences, as to the tensions and divisions which are likely to result. Moreover, as a number of developing countries argue, discussion within these bodies, according to their articles of agreement, is generally limited to economic, financial, and developmental criteria, precluding what they term "extraneous political" factors. Added to these difficulties has been the essentially "punitive" starting point of many of those advocating discussion of human rights in international financial institutions, as their ultimate objective is linked more to the termination of projects or cancellation of assistance than to ameliorating grievances.[15]

Canada and some other Western countries have contended, however, that human rights considerations are relevant in the international financial institutions, particularly when abuses damage developmental prospects or when developmental plans contribute directly to discriminatory policies within project countries. These points have been the subject of private discussions, to ensure that human rights are an element in programming and funding. But the resistance of broadly-based governing bodies is likely to continue, at least in the short run, and particularly until the more overtly punitive vestiges of this approach are excised from public discussion. In order to preserve the integrity of developmental institutions, it seems clear that, for the moment, private discussion is preferable to public confrontation in most multilateral agencies pending the adoption of more coherent policy frameworks.

Faced with the continued reticence of key development and economic agencies to broach the issue of human rights openly, a number of donor states have approached the problem from a complementary perspective. In 1987, the Commission on Human Rights created the United Nations Voluntary Fund for Advisory Services in the Field of Human Rights, now known as UNFAS. Although only in its tentative, formative phase, the fund has generally been seen as a modest but realistic step in providing multilateral funding to states which recognize the need for human rights development and which are willing to cooperate with the UN Centre for Human Rights in identifying and implementing programs. A number of key policy issues remain to be resolved on the work of UNFAS, including its role in identifying and planning projects and its relationship to potentially complementary UN agencies. Project implementation is also a major consideration, particularly for the many non-governmental organizations that might play a role in UNFAS' delivery of programs. These issues are expected to be resolved pragmatically through the eventual preparation and adoption of a medium-term plan by the Commission on Human Rights.[16]

Over the longer term, a prime objective of multilateral action is to integrate two currently disparate elements of the UN human rights system, namely, the reporting obligations under various international instruments, and the developmental and technical assistance capabilities of the UN system. Under an integrated approach, states which require help in legal reform leading towards ratification of various instruments could obtain technical expertise from the centre, either through the fund or by way of approaching bilateral donors or other multilateral institutions such as the Commonwealth. Upon the eventual examination of state reports subsequent to ratification, the various treaty-based implementation bodies would be invited to comment on structural or institutional problems which could be remedied by recourse to additional development cooperation projects. The Centre for Human Rights could then investigate the possibilities of technical assistance from the resources available to both the UN and the state concerned. In this way, the United Nations could find an effective result from reporting obligations which now seem virtually devoid of purpose, while at the same time building up the technical assistance capabilities of the centre and the confidence of member states in UN human rights programs.

Integrating development and human rights in a constructive way is clearly applicable to only a certain range of countries. It hardly applies to human rights violations in most of the developed world, which generally stem more from lack of will and repressive political systems than from inherent structural deficiencies. Similarly, at the other end of the spectrum, it would be highly inappropriate to provide assistance to governments of states where there are flagrant, persistent, and systematic violations of human rights, and where the state concerned lacks the political will to begin the process of institutional reform. In these cases, bilateral or multilateral programs in the human rights field cannot be seen as rewards for performance falling well short of international standards. However, for a number of years most governments and non-governmental organizations have been searching for ways of building respect for human rights in those states which constitute the vast "middle rank," where the problems are not egregious and where the solutions are attainable.[17] The constructive approach to institution-building is one way of coming to grips with this issue, especially among governments with both the technical expertise and the available funding.

4. *Public Information Initiatives*

A fourth component of a human rights strategy is public information, an issue closely linked to the imperative of technological innovation. Since the adoption of the Universal Declaration, the UN system has wrestled with the problem of how to project critical human rights principles past elite audiences at international meetings into the domestic arenas, where individuals could learn of their rights and act upon them. Over the past decade, the issue of information has become especially prominent, particularly in the East-West context, because of reprisals taken by several countries against persons seeking to disseminate human rights information. The human rights debate was once shielded behind a wall of official UN languages, elite audiences, and governmental institutions. In a global society, however, in which rapid means of communication and contact are erasing frontiers to learning, public information has become a major preoccupation in all countries and at all levels of society.

In 1988, as part of the fourtieth anniversary of the Universal Declaration, the UN launched a World Information Campaign in the field of human rights.[18] Although still to be defined precisely by the secretary general and the Commission on Human Rights, its central idea is to diffuse more widely information materials about human rights, and begin the process whereby the world as a whole can learn of the rights to which it is entitled. Handled badly, the World Information Campaign might be little more than a comfortable slogan for meaningless glossy publications or pseudo-academic magazines, all with little overall impact. Handled well, public information could become a pivotal theme for the decade, meriting attention equivalent to that enjoyed by the more traditional international themes of implementation and legislation. The challenge is to infuse the campaign with the scope and content necessary to ensure its effectiveness. Two considerations are in order.

The starting point in planning a world campaign is in determining the audiences, messages, and formats of possible information materials. In making these essentially subjective decisions, neither international organizations nor states should enjoy a monopoly.

Additional actors need to be brought into the scene, namely the non-governmental sector, perhaps by way of an NGO advisory committee, to assist the Commission on Human Rights, whether formally or informally. NGOs will be the prime users of materials. They are the logical points of contact with grassroots organizations. They are the most representative purveyors of the diverse messages which the campaign must eventually carry. The first challenge of the information campaign, if it is to become an effective element of an overall human rights strategy, is to prepare the partnerships through which the end-product can eventually be delivered.

A second consideration is that information does not exist in a vacuum. Information materials are only the vehicles through which messages are conveyed. But those messages, in turn, need to be carefully developed, essentially by integrating information into programs and projects in the human rights area. Projects involving education, for example, might well contain a functional human rights information component, geared to teaching about human rights and to training persons about gaining recognition and respect for their rights. Canadian organizations have already developed substantial expertise in this area. A focus on "functional information" means that a world campaign will not centre exclusively on esoteric principles of international human rights or the simple distribution of UN documents. Instead, it would deal with broader issues, relevant to different regions and situations, geared more to ensuring respect for human rights than to celebrating the achievements made to date. Functional information, in turn, means that considerable attention needs to be paid to targetting, in order to ensure that there is an essential harmony between information materials and the audiences reached, in terms of language, format, educational level, and content.

The World Information Campaign is only one aspect of international activities in the information field. UNESCO, the OAS, OAU, and the Commonwealth are becoming involved in the preparation and dissemination of information materials, and regional non-governmental organizations promise to be the main proponents, authors, and consumers of information materials. The international human rights information network is large and growing. Recent initiatives, some in the context of bilateral development assistance programs, have increased the amount of emphasis devoted to human rights materials, and have helped to rechannel the debate to wider audiences covering more fundamental issues. Although information programs are controversial, because they raise expectations and place pressures upon unresponsive governments, they merit support as one aspect of an overall strategy. Once individuals and groups know and begin to act upon widely-recognized and accepted rights, the international community will be placed in a better position to defend their interests and mount the initiatives through which progress will eventually be achieved.

5. *Pragmatic Problem-Solving*

A fifth component of a human rights strategy is building mechanisms to further the process of pragmatic problem-solving, generally involving cases of individuals or groups. This element is the simplest to describe and the least amenable to theoretical analysis or justification. Its bottom line is straightforward: the effectiveness of its results. Notionally, it can be sub-divided into two aspects: the establishment of formal means or institutional mechanisms to solve problems bilaterally or multilaterally; and the use of informal, sometimes *ad hoc* channels which vary from case to case. Given the general slowness of the international system, and the reluctance of most states to come to grips with human rights issues, a focus on pragmatic problem-solving is the one area likely to yield concrete results in emergency situations or during short-term crises where rapid action is critical.

Bilateral channels for pragmatic problem-solving have existed for decades. They are increasingly being used in human rights cases, at all levels from heads of state or foreign ministers during bilateral meetings to the more normal interchanges between embassies and foreign ministries. Although some states still resist the incursions of international law and practice and reject representations on human rights matters as interference in matters of domestic concern, this type of resistance is diminishing in significance. For the most part, where diplomatic approaches are rooted in agreed international standards, where they are seen as reflecting legitimate humanitarian concerns, and where the objective is finding solutions to potential irritants or adverse developments, bilateral channels can be highly effective. The success of pragmatic problem-solving in these cases can generally be attributed to the much-maligned technique of "quiet diplomacy." Contrary to most popular assumptions, the closer the relationship between states, the more likely it is that these types of representations will be successful. This, in any event, has largely been the Canadian experience in situations as diverse as Cuba, Singapore, and South Korea, where diplomatic initiatives have led to useful results.

One key element in pragmatic problem-solving is focusing on solutions to concrete cases, even where the situation itself might be beyond much change. In Eastern Europe, for example, the most graphic signs of human rights success are the numbers of family reunification cases solved and the numbers of exit visas processed for those soliciting permission to leave. In most other cases there are similar means of tackling manageable difficulties, thereby contributing to the amelioration of immediate human problems and, at least indirectly, to the directions of change. Reductions in the number of exiled persons, political prisoners, or disappeared persons are therefore important objectives meriting sustained diplomatic effort. There is a danger that focus on short-term targets, such as reducing numbers of persons held without charge, misses the larger point that even one incarceration without charge, one disappearance, or one political prisoner constitutes an unacceptable violation of human rights. Nor do solutions to individual problems necessarily mean progress on the path to improving a more global situation. But pragmatism must remain a technique of action in the area of human rights, particularly when it offers the only hope for a positive evolution of events in many parts of the world.

At the multilateral level, traditional allergies to developing effective international machinery in the human rights field are now being overcome, albeit slowly. For the first time in some 40 years, there are now some prospects that new techniques can be developed which will give such bodies as the UN Commission on Human Rights an effective role in urgent cases or situations. A path-breaking mechanism has been the Working Group on Disappearances, which since its establishment in 1980 has developed several informal procedures to act rapidly in emergency situations. Proposals to make use of the bureau of the Commission on Human Rights on an intersessional basis offer the same prospect of largely unpublicized, but possibly effective, pragmatic action in urgent cases. The keys to building these types of informal mechanisms are mutual confidence and balance. All of the regional groups of the UN system would need to have an equitable role to play, and the procedures would have to function through governmental representatives with a minimum amount of publicity. It is widely recognized among governments that success in the area of pragmatic problem-solving involves a trade-off: results against publicity. But it is rarely questioned that effective action, if this is indeed the result, is well worth foregoing the ritual of public condemnation.

There are additional informal channels that could be better deployed in resolving cases pragmatically. Both the secretary general of the United Nations and the Commonwealth secretary general, for example, are vested with "good offices" functions. Although originally designed to promote conciliation in the event of inter-state conflict, these powers have been deployed to good effect in human rights cases, particularly where the organization concerned has established some standing over time. The results of the 1989 session of the UN Commission on Human Rights with respect to Cuba was, in a sense, a reaffirmation of the "good offices" role of the secretary general. The recently-established "early-warning unit" of the UN Secretariat can also be viewed as an adjunct of a "good offices" function, since it exists not only to provide advice on anticipated crises, but also to pave the way for diplomatic initiatives before simmering conflicts have developed into full-blown crises.[19] "Good offices" needs to be enhanced and developed as a diplomatic technique, particularly because heads of international organizations have wide latitude of manoeuvre and often greater numbers of contacts than do representatives of only one state.

Pragmatic problem-solving is shunned by many human rights advocates because of its moral ambiguity. Securing the release of a political prisoner, for example, or an exit visa for a human rights advocate, does little or nothing to come to grips with long-term problems in other societies. Seldom is guilt acknowledged, even for many long-standing or flagrant abuses. Other cases may be allowed to persist. Justice is not done to perpetrators, and the structure of power in the offending state is not altered. Often success comes because of bargains which are themselves morally questionable, for example, the release of political prisoners in order to gain consensus on an international arms control regime. It can even be argued that the alleviation of small immediate problems assists in the perpetuation of repressive regimes, because it prevents the accumulation of grievances that might eventually trigger more fundamental change. But it remains important. While many may disparage pragmatic problem-solving as an approach to human rights issues, its merits are clearly demonstrable at the human level, among families reunited or political prisoners released. It deserves support because it offers small but important steps forward within the larger context of human rights.

The Components and their Inter-relationships

These five components constitute one possible strategy for the next decade. Taken together and implemented in coherent fashion, they are realistic, attainable, and possibly effective elements in an overall approach to a difficult, divisive subject. If implemented by the international community gradually with a sufficient degree of support and commitment, the five components can come to grips with different challenges which now face both bilateral and multilateral human rights environments. These five areas are not exhaustive, and are themselves the result of subjective and strategic calculations as to what is attainable at the present time and what is likely to be effective given the latent barriers to more comprehensive action. Taken as a whole, this approach involves difficult choices for governments and non-governmental organizations, such as forgoing the temptations of espousing popular but unrealistic causes, and trusting occasionally to the potential of quiet diplomacy, even when confrontation and disclosure seem more morally satisfying.

The five components are not always mutually consistent; nor should consistency be considered a prized criterion in the field of human rights. Standard-setting and pragmatic problem-solving are almost opposites. They begin from totally different assumptions about how the international system should operate in principle and how it functions in practice. Constructive development and diplomatic action can also come into conflict, especially where assessments differ about another government's commitment to reform and the extent of its legitimate efforts. Public information initiatives can come to fruition only in a relatively open environment, and presupposes at least a minimal respect for the concept of freedom of expression. Diplomatic action and pragmatic problem-solving are frequently similar endeavours, although the latter is often more involved with the intergovernmental machinery of the United Nations or the Commonwealth.

For governments which embrace the five components or portions thereof, the starting point is a hard-headed assessment of reality: What is the situation like? What can realistically be obtained? Which of the five components, or which of its combinations, is likely to yield results? There is, in short, a certain logic to action, whether by the governmental or non-governmental communities, beginning with an objective assessment of situations, proceeding to an evaluation of possibilities for action or influence, and ending with a plan of action which lends itself to implementation bilaterally, multilaterally, or in the company of others with similar human rights objectives. Not everyone will share similar assessments or plans of action in a given situation. There are possibilities that those outside the policy-making sectors might contest the starting assumptions and the subsequent deployment of policy instruments. Adoption of a strategy, no matter how well thought out, does not eliminate the subjective judgments which have always been inherent in the human rights debate.

Similarly, the adoption of such an overall strategy is not necessarily a sufficient or total response to rapidly-evolving situations, where governments can change quickly and policies can reverse overnight. Tactical considerations will inevitably require adaptation as situations and cases evolve, in order to ensure a constant commitment to long-term goals. To those searching for magic formulas and tailormade solutions to govern difficult decisions in a sensitive area, such a framework will be disappointing. Governments might well be committed to doing "the right thing." Knowing what "the right thing" is, however, is still likely to prove difficult, and the decisions involved in implementation will always be the object of debate. Juggling these five components—with a constant view to their effectiveness—calls for even greater amounts of individual and collective judgment rather than recourse to automatic equations.

In an ideal world, perhaps the world which the authors of the Universal Declaration thought they were creating in 1948, these types of strategies and tactics would appear to be terribly short-sighted and devoid of much of the emotional quality with which the declaration is imbued. The focus on implementation and results might seem too narrow. Willingness to balance means and ends might appear to be somewhat problematic. However, the larger, more ambitious program still remains, as an ideal against which short-term measures should be judged, or as a preferred option should our prognosis of the future prove far too pessimistic. It would include the creation of an international court of human rights, open to persons from every region and state, and the integration of all of the current covenants and conventions into one comprehensive, powerful document with effective implementation machinery. It would harmonize the work of governments and non-governmental organizations, whose relationships are currently far too adversarial. It would tackle human rights and development openly in every multilateral institution.

But 40 years after the adoption of the Universal Declaration of Human Rights, we are still awaiting signs that these more propitious developments are within our grasp. The world remains imperfect, and the grievous violations of human rights and flagrant lack of respect for life and humanity which inspired the declaration's authors are still with us. One option is to continue railing randomly against the forces of injustice on a thousand different terrains. Tempting as this approach might be from the point of view of moral absolutism, it risks draining time and energy, and it courts the failure which undermines dedication and morale. The strategy suggested here takes a different approach—no less principled, no less rigorous in its insistence on long-term results. The approach focuses on the strategy and tactics for the next decade, and on a clear orientation towards what is attainable and effective in an imperfect international order. While claiming neither universality of scope nor comprehensiveness of vision, it offers one modest prospect of potential: taking the global community one step further towards achieving the transcendent goals of the Universal Declaration.

Notes

1. Stephen Lewis, "The Universal Declaration of Human Rights: Forty Years – and Now What," in *Eleanor Roosevelt and the Universal Declaration of Human Rights: An Agenda for Action in 1988*, ed. by John F. Sears (Poughkeepsie, New York: Franklin and Eleanor Roosevelt Institute, 1988), pp. 27-33.

2. On these and other points, the debate is extensive. See, for example, Richard B. Bilder, "Rethinking International Human Rights: Some Basic Questions," *Wisconsin Law Review* (1969), pp. 171-217; John W. Holmes, "Everything Has Its Season—and That Adds to Its Complexity," *International Perspectives* (November/December 1981), pp. 10-13; and R.J. Vincent, *Human Rights and International Relations* (Cambridge: Royal Institute of International Affairs, 1986.) Some of these themes are explored in *Human Rights and Canadian Foreign Policy: Selected Statements and Speeches* (Ottawa: Department of External Affairs, 1988).

3. Jack Donnelly, "Human Rights: The Impact of International Action," *International Journal* 43 (Spring 1988), p. 263.

4. David Weissbrodt, "Strategies for Selecting and Pursuing International Human Rights Matters," in *Guide to International Human Rights Practice*, ed. by Hurst Hannum (Philadelphia: University of Pennsylvania Press, 1984), p. 21.

5. At the UN Commission on Human Rights and the sub-commission, the following drafting exercises are currently under way: the Convention on the Rights of the Child, the declaration on the rights of persons belonging to minorities, the right to promote human rights, the declaration on indigenous rights, and the rights of the mentally ill. This only scratches the surface, as the sub-commission has a number of topics awaiting treatment when the agenda begins to clear. The UN General Assembly is also in the process of finalizing a convention on the rights of migrant workers.

6. Philip Alston, "Conjuring up New Human Rights: A Proposal for Quality Control," *American Journal of International Law* 78 (July 1984), pp. 607-621; see, as well, UN General Assembly Resolution 41/120 of December 1986, "Setting International Standards in the Field of Human Rights."

7. See, for example, Theodor Meron, "Norm Making and Supervision in International Human Rights: Reflections on Institutional Order," *American Journal of International Law* 76 (October 1982), pp. 754-778; see as well the Canadian statement and the general debate on this item at the fourty-fourth and fourty-fifth sessions of the Commission on Human Rights, where the treaty-based monitoring bodies were extensively discussed; and the secretary general's note A/44/98 of February 3, 1989, on

"reporting obligations of states parties to the U.N. instruments on human rights."

8. At its 1989 session, the Commission on Human Rights had before it reports on Afghanistan, Chile, El Salvador, Guatemala, Haiti, and Iran, of which only Iran withheld cooperation with UN special procedures. Action was taken at the same session on Romania and Burma. A further eight situations were dealt with in the "confidential" or closed portion of the commission's deliberations.

9. See, for example, Allan Gotlieb, "The Changing Canadian Attitude to the United Nations Role in Protecting and Developing Human Rights," in *Human Rights, Federalism and Minorities*, ed. by A.E. Gotlieb, (Toronto: Canadian Institute of International Affairs, 1970), pp. 16-53; Margaret Doxey, "Human Rights and Canadian Foreign Policy," in *Behind the Headlines*, vol. 37, no. 4 (Toronto: Canadian Institute of International Affairs, 1979); Cathal J. Nolan, "The Influence of Parliament on Human Rights in Canadian Foreign Policy," *Human Rights Quarterly* 7 (1985), pp. 373-390; and R.O. Matthews and C. Pratt (eds.), *Human Rights in Canadian Foreign Policy* (Kingston and Montreal: McGill-Queen's University Press, 1988), especially pp. 3-20.

10. Gerald Schmitz and Victoria Berry, *Human Rights: Canadian Policy Toward Developing Countries* (Ottawa: North-South Institute, 1988), p. 8; see as well Matthews and Pratt, *Human Rights*, pp. 14-15.

11. In this context, the work of various Nordic non-governmental institutions is relevant; see, for example, *Human Rights in Developing Countries, 1987/88* (Copenhagen: Akademisk Forlag, 1988).

12. See especially T.A. Keenleyside, "Development Assistance," in Matthews and Pratt, *Human Rights*, pp. 187-208.

13. On Canadian NGOs, see T. Brodhead and B. Herbert-Copley, *Bridges of Hope? Canadian Voluntary Agencies and the Third World* (Ottawa: North-South Institute, 1988).

14. For the Canadian case, see *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations* (1986); *Canada's International Relations: Response of the Government of Canada to the Report of the Special Joint Committee* (1986); *For Whose Benefit? Report of the SCEAIT on Canada's Official*

Development Policies and Programs (1987); *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report of the SCEAIT* (1987); and *Sharing Our Future: Canadian International Development Assistance* (1987).

15. Philip Alston, "Making Space for Human Rights: The Case of the Right to Development," *Harvard Human Rights Yearbook* 1 (Spring 1988), especially pp. 15-20.

16. See UN document E/CN.4/AC.39/1989/L.3 of February 2, 1989 for an early indication of the thinking of the UN Centre for Human Rights.

17. Of relevance here is the Dutch experience; see P.R. Baehr, "Concern for Development Aid and Fundamental Human Rights: The Dilemma as Faced by the Netherlands," *Human Rights Quarterly* 4 (Spring 1982), pp. 39-52.

18. For background, see *United Nations Action in the Field of Human Rights* (New York: United Nations, 1988), pp. 335-359.

19. See the statement by Mr. James Jonah, assistant secretary general of the United Nations, before the UN Commission on Human Rights, February 24, 1989, regarding the "early-warning unit" and its possible future role.

The Limited Place of Human Rights in Canadian Foreign Policy

Cranford Pratt

Résumé

Le gouvernement du Canada a souvent négligé de témoigner ouvertement d'un souci des droits de la personne dans ses relations bilatérales avec des états violant de manière flagrante et continue les droits de la personne. Lorsque des décisions importantes ont été prises, c'est parce que l'initiative en est venue de l'arène politique, la bureaucratie cherchant souvent à en minimiser l'importance. Les politiques canadiennes vis-à-vis de l'Afrique du Sud illustrent très bien ce phénomène. Une autre caractéristique des politiques du Canada en matière de droits de la personne est qu'on les applique beaucoup plus vigoureusement lorsque l'état contrevenant se trouve dans la sphère d'influence de l'Union Soviétique que lorsqu'il se trouve être aligné sur les États-Unis.

La vision du monde qui est dominante dans les rangs des plus anciens décideurs politiques explique les hésitations et l'importance limitée accordée aux droits de la personne. Dominée par des considérations d'ordre économique et de souveraineté nationale et encore très influencée par la guerre froide, la politique extérieure du Canada n'a pas encore commencé à démontrer de manière significative sa préoccupation pour les droits de la personne.

Preface

The list of those expected to attend the "Symposium on Human Rights, Development and Foreign Policy: Canadian Perspectives" included many who had long been active in promoting a Canadian foreign policy that would be more responsive to human rights. It has long been my sense that many of us have come to the view that there are important obstacles within government to a more forthright incorporation of a human rights dimension in Canada's foreign policy. I therefore wrote a paper which I hoped would generate a discussion amongst academics and NGO representatives of what we have collectively learned about how the Canadian government deals with human rights issues in its foreign policy.

The paper generated a discussion, certainly, but not the one I had anticipated. It was dominated by experienced civil servants who rejected both the premise of the paper that the public service has had a major influence in the determining of Canadian policies towards human rights, and its main empirical generalizations that that influence had lessened the importance of human rights in Canada's foreign policy.

The paper which follows has been revised in the light of the discussion which it received. In particular, more space and care is taken to explain why I, and I think many others, have come to the conclusion that the world-view which predominates within senior policy-making circles in Ottawa does not encourage or support a major emphasis on human rights. I failed at the symposium to present this argument in a way that did not irritate and offend the officials who were present. Perhaps such a reaction is inevitable, for to listen to a discussion by another of one's ideology is almost as stressful as to have to endure a discussion by others of one's neuroses. However, as I fondly hope that I am engaged in public policy analysis rather than "civil service bashing," as several officials felt I was, it was worth this second, more careful, effort to develop the argument.

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Robert Matthews and I recently edited a volume on this very subject.[1] I shall draw heavily on that volume. The contributors are in no way implicated by the use I make of their work, but I am very much in their debt.

The topic "Human Rights and Foreign Policy" could be discussed entirely in terms of the constraints "out there" which limit what a well-intentioned Canada can do about human rights beyond its borders. These constraints are legion and they are important. A strong set of human rights initiatives by Canada might cause an oppressive regime to be more obdurate rather than less; it might permit the regime to arouse a nationalist reaction against outside interferences which it could bend to its own support and thus weaken rather than strengthen the indigenous forces that are struggling for their rights; it might jeopardize such international objectives as limiting nuclear proliferation and arms control which are at least as important as the advancement of human rights.

I shall not address any of these limitations. We can speculate about them, but we have no responsibility for them and little influence on them. I want instead to discuss the one factor that has limited what Canada has done and is subject to our influence. That factor is the reluctance of the government of Canada to give human rights considerations the influence on foreign policy which they could in fact have been given.

That is an important phrase, "which they could in fact have been given." Robert Matthews and I are not engaged in moral reveries, proposing human rights policies that ignore other policy determinants and domestic political constraints. Rather, our judgment is that even after the force of these other determinants has been appropriately acknowledged, it remains clear that Canadian foreign policy has been less responsive to human rights considerations than it could reasonably have been. If that is true, then constraints upon that responsiveness have operated within the decision-making processes of government. I want primarily to discuss the evidence for this judgment and to speculate about why this has been so. However, let me first address the major criticism which was directed at the argument of this paper at the symposium.

Daniel Livermore, of the Human Rights Division of the Department of External Affairs, was a member of the panel which discussed the earlier version of this paper. He rejected, as did several of his colleagues from the department, the appropriateness of seeking an explanation for a government policy in the dominant views of the public service and the inter-departmental dynamics of that service. Policies, he suggested, are made by the political heads of government. Civil servants offer advice and implement what is decided upon but do not decide policy. The argument of the paper is therefore fundamentally flawed because it is based on the false premise that the public service makes policy.

Let me concede as much as possible to the Livermore position. Certainly, political initiatives have been important in the formulation of many policies. Moreover, no policy can be initiated or changed if the cabinet is determined otherwise. Similarly, no civil service can frustrate a policy initiative which the political leadership is determined to pursue. Certainly as well, the political leaders must accept responsibility for what is done, however important the role of civil service. Public opinion sets boundaries to what the civil service can do and recurrently influences the agenda of the initiatives which it must consider. Moreover, the civil service will be careful, in the exercise of its influence, to be sensitive to the political constraints which set the parameters of what is permissible. It will also often see it as part of its responsibility to be sensitive to, and indeed to canvas the opinion of, interested parties before exerting its influence on policy. Nevertheless, it is inevitable that the public service will have a very significant influence in the shaping of public policy, including foreign policy.

A wide variety of factors make this unavoidable: the role of the civil service in identifying issues and in defining policy options; the unrivalled command of information and precedents which it enjoys; its self-confidence and professionalism; its ability to influence public perceptions of national and international issues; the close links which exist between different government departments and sectors of the economy; its responsibility to implement policy. Factors such as these explain why there is near-unanimity in scholarly writing on public policy generally, and on the making of Canadian foreign policy, that the bureaucracy wields a very substantial policy influence. This is an unquestioned premise in the major general studies of these matters,[2] and is borne out time and again in the scholarly studies of specific public policies.[3] It is, indeed, central to much of the more theoretical writing on Canadian foreign policy.[4] In this literature the debate is over such questions as the extent of the autonomy of the bureaucracy in shaping foreign policy; whether the uses made of that autonomy reflect specific societal interests, direct state interests, or a broader and genuine national interest; and whether it is desirable to limit that autonomy. However, no one, I think it is fair to say, treats a description of the formal relationship of public service and political leadership in the determination of policy as a guide to the actual influence of the public service.

If I am right in all this, then it becomes interesting to ask why public officials were so resistant to this argument when I offered it. Partly, no doubt, this is to be explained by the personal dynamics of the exchange. I was insufficiently tactful in suggesting that an important part of the explanation for the limited role of human rights in Canadian foreign policy should be sought in the world-view of the senior civil service; the officials used the formal responsibility of the minister and cabinet to deflect what they took to be criticisms of their role. However, more was at play than this. The final responsibility of the minister and cabinet *is* a very important feature of our political system. Moreover, the Department of External Affairs (DEA) and the Canadian International Development Agency (CIDA) had recently experienced the centrality of ministerial responsibility in a major way when they drafted, respectively, the government's response to the

Hockin-Simard[5] and Winegard[6] reports. Thus, Mr. Livermore is correct. The bureaucracy is ultimately advisory on all policy issues. Nevertheless, the academic students of the policy process are also right. The advice of the civil service is so influential, the delegation of authority to it so substantial, and its ability to influence opinion so powerful that it often is more meaningful to seek an explanation for a particular policy in whatever has shaped the judgment of the senior civil service.

All of this, however, merely establishes that it is legitimate, and indeed conventional, to look to the role of the bureaucracy when seeking to explain public policy. I now ask whether an important part of the explanation for the limited impact of human rights on Canadian foreign policy, if indeed it is limited, can be found in the values and world-view which predominate in the senior bureaucratic ranks of government. First, however, it must be established that important constraints operating within the decision-making processes of government have in fact limited the consideration of human rights in Canadian foreign policy. I have grouped the evidence for this judgment into four different categories, each illustrating a different theme.

First, *the government has chosen to follow what has been called a one-track policy on human rights*. When it has decided to disapprove publicly of the human rights record of another government and to seek to influence its policies, the Canadian government has done so primarily within and through the structure of the United Nations concerned with human rights. That is the first track. The second track, the application of pressures on gross violators of human rights, bilaterally, in concert with others, and within the international agencies not primarily concerned with human rights, has been used much less frequently.

Canada has not always been an active proponent even of the first track. For example, we did not use the International Labour Office in the inter-war years actively to promote greater recognition of economic and social rights; we were tardy acceptors in the 1950s of a widening of the responsibilities of the United Nations High Commissioner for Refugees; we were somewhat cautious for several decades about the UN Commission on Human Rights. However, for the last 15 years, Canada has been an active and effective participant in, and supporter of, the commission and of the Human Rights Committee. The first track is, therefore, now in reasonably active use.

The Department of External Affairs, however, has been reluctant to give active expression in Canada's bilateral policies to the criticisms it has been willing to make in the Human Rights Commission. The point I am making is very similar to the central argument of an excellent paper by Patricia Taylor and Terence Keenleyside.[7] After a substantial review of the record, they concluded that Canada has a dubious record in taking unilateral actions against gross violators of human rights. They demonstrated that we have taken such action very largely against those countries with whom our relations are slight and who, therefore, will be unlikely to be much influenced by our moves.

In addition to doing very little bilaterally, Canada has also always opposed the argument that human rights considerations ought to influence the decisions taken by our executive directors of the World Bank, the IMF, and the regional development banks. However, pressure on this point has increased very significantly in the last two years. First the Hockin-Simard Committee and then the Winegard Committee unanimously recommended that Canada critically examine loans and credits by these international financial institutions to gross violators of human rights. The official response of the government to the Winegard Report turns aside this recommendation with the bland claim that "Canada endeavours to ensure that human rights issues are given due consideration in the activities of the international financial institutions."[8] This is simply untrue. The reality is that Canada has always held that human rights consideration ought not to enter into such decisions. This viewpoint has been forcefully presented at different times by Mr. Lalonde, Mr. MacEachen, Mr. Wilson, and Mr. Clark in letters to interested NGOs. Only by interpreting "due consideration" in the quotation to mean no consideration is the quotation a truthful statement.

So much for the one-track character of Canada's human rights policies. The second theme is that *where there have been significant policies motivated by human rights concerns, the impetus has in almost all cases come not from DEA but from the political leadership and from concerned public interest groups.* This is illustrated by the story just told of Canadian policy towards human rights and the international financial institutions (IFIs). Until Mr. Clark became the secretary of state, senior officials of the departments of Finance and External Affairs and of CIDA had always been able to convince whoever were secretary of state and minister of finance that human rights considerations should not enter into IFI decision making. To the extent that there has been a change in policy on this issue, it has followed sustained lobbying by the Taskforce on the Churches and Corporate Responsibility and other groups and the recommendations of the Hockin-Simard and Winegard committees that human rights ought to be a factor in the loan and credit decisions of the IFIs.[9]

It is equally true that Canadian policies towards *apartheid* in South Africa have stiffened over the last two and a half decades despite, rather than because of, the preferences of the bureaucracy. The same pattern has recurred on a number of other human rights issues. Canada's policy in 1973 towards Pinochet's Chile and in 1979-1980 towards human rights violations in El Salvador were initially defined by DEA in very uncritical terms. The policy became more critical only in response to societal pressures and more active political interest.[10]

My third theme is that *when a strong lead is given politically for a more forceful human rights policy, there is a recurrent tendency for the bureaucracy to minimize its significance rather than to capitalize upon it.* Anyone who has been involved with or followed closely the emergence in the last three years of a stronger Canadian policy towards South Africa will know of the sustained endeavours of the Department of External Affairs to minimize the policy consequences of Mr. Mulroney's and Mr. Clark's personal commitment to this issue. Moreover, in recent months, with Mr. Mulroney no longer giving the issue the same measure of personal attention, Canadian policy towards South Africa is rapidly returning to the more cautious posture which DEA has always preferred.

Something quite similar happened after the announcement in December 1977 of a set of stronger measures towards South Africa. These policies were in almost every instance implemented in a very minimal fashion. The Code of Conduct for Canadian Businesses in South Africa, at best a weak device, was rendered totally useless by the haphazard and disinterested way in which it was implemented. The Canadian trade commissioner was withdrawn, but a local businessman who had been a successful sanctions-buster for Smith's Rhodesia was made a locally appointed equivalent. The disengagement of the Export Development Corporation (EDC) from South African involvement proved much less than had first been intimated. Within several years, in other words, the policy proclaimed by Mr. Jamieson in 1977 had very substantially lost any significance. Only when Mr. Clark, as secretary of state, took a direct and close interest in the question, did Canada begin to implement the 1977 policy with any vigour.[11]

Ernie Regehr tells a similar story of minimal implementation in regard to the official policy that Canada would sell no arms to countries whose policies are wholly repugnant to Canadian values.[12] That attractive policy, often referred to, was in fact never applied. The policies of no country were ever judged so repugnant to Canadian values that we should not sell arms to them. Regehr also documents the fact that the rules relating to the sale to oppressive regimes of equipment capable of being used for both military and civilian purposes have consistently been interpreted loosely so as to permit more sales.

A final example of minimal implementation is provided by the government's response to the Winegard Report's recommendations relating to human rights and bilateral aid. The report discusses the issue with great care and develops a full set of recommendations. As well, it had long been clear that Mr. Clark strongly supported fresh initiatives on this issue. The official response suggests that the government accepts in principle the recommendations of the Winegard Report on this subject. Yet in my view, it is much more accurate to say that the government is in fact engaged in a damage limitation exercise.[13] It accepts several recommendations that have little wider policy significance—namely, those relating to the creation of an International Institute of Human Rights and Democratic Development and a human rights unit within CIDA. However, it rejects three major recommendations which were intended to ensure that human rights would be treated as a major foreign policy concern; these were (1) the preparation of a framework paper on human rights in development policy, (2) the annual presentation of an ODA-Human Rights Review which would be discussed each year by two major parliamentary committees, and (3) a clear policy to cease government-to-government aid for all countries that are severe human rights violators.

My fourth theme is that *human rights are much more emphasized in Canadian foreign policy when the policy consequences re-enforce rather than work counter to cold war or commercial considerations*. It is all too evident that Canada is more forthright in condemning human rights violations in regimes within the Soviet camp than in countries that are allied to the United States. This very largely explains the contrast between Canadian policy towards Afghanistan, Kampuchia, and Poland with, say, Indonesia, Honduras, and El Salvador. It is also worth recalling the government's discussion of Canadian policy towards South Africa in *Foreign Policy for Canadians*.[14] It spoke of the need to balance Canada's abhorrence of *apartheid* against the better-than-average profits that could be made in South Africa. At a time when Canadian trade with South Africa represented less than half of one per cent of total Canadian foreign trade, the government felt that that balance had been appropriately struck by Canadian policy as it then was. This is a good illustration of my fourth theme. Even slight and peripheral economic gains were judged to be more important than a stronger human rights component of our foreign policy.

Let me, finally, hypothesize on why these four themes have been so recurrent in government policy, on why the Department of External Affairs has been more hesitant and cautious about human rights than it could have been. I locate my answer to this question in the world-view, the ideology, that is dominant amongst foreign policy decision makers in Ottawa. Within quite broad parameters that are set by what Ronald Manzer has called the Canadian public philosophy,[15] those in government who shape our foreign policy enjoy a significant degree of autonomy. They are no doubt influenced by the values and world-view that are dominant more generally in Canadian society, and prudence in any case suggests that they be respectful of them. However, on a great many human rights issues policy makers have had a good deal of autonomy in defining Canadian policy.

The result of this autonomy has not been randomly selected policies. Senior civil servants in External Affairs constitute a highly professional corps. They have their own important sub-culture. They have their own perception of the national interest which it is their obligation to promote. They have their own understanding of international politics and of how Canadian interests can best be promoted internationally. These perceptions and this understanding are important determinants of Canadian foreign policy. They shape the views of decision makers on how issues are to be understood. They influence the weight to be assigned to different objectives. They constitute a formidable barrier to the intrusion of ideas and objectives that run counter to them.

Four powerful and central components of the ideology dominant amongst senior policy makers have worked against a more forceful Canadian human rights foreign policy. First, their world is dominated by considerations of sovereignty and national interest. They understand their professional duty to require that they pursue Canadian interests within an international system in which their counterparts in other countries are similarly championing their states' interests. Respect for the sovereignty of states is seen as central to what little order there is in the international system.[16] Obligations to those beyond our borders, an effective foreign policy expression of the more profound values of Canadian political culture, are often treated as unconvincing distractions, as soft intrusions into the hard realities of international politics.

The second and third components of the dominant ideology are two settled premises which are still largely unquestioned.[17] The first is that the primary threat to Canadian security and to international peace comes from international communism; the second, that the cornerstone of our foreign policy must be the maintenance of close and harmonious relations with the United States. As long as those premises are deeply entrenched, one or both of them will frequently block, as they have in the past, a more assertive human rights foreign policy.

The fourth component of the dominant ideology is a marked sensitivity to the interests of capitalism in Canada. In a stable capitalist society such as Canada, the senior bureaucracy, for obvious structural reasons, will regard as one of its primary obligations that it ensure the health of the economic system on which depends the prosperity of the economy and the revenues of the state. When that economy is under strain, as it has been for the last ten or more years, the concern to advance the interests of Canadian capitalism becomes ever more central to foreign policy decision making.

Respect for the principle of sovereignty, the power of cold-war perspectives, the centrality of the U.S. relationship, and the special responsiveness to Canadian economic interests are, I hypothesized, features of the world-view that is dominant in Ottawa. Together, they go a long way to explain why Canadian foreign policy on human rights issues has been cautious, limited, and hesitant.

A Postscript

This paper did not attempt to discuss whether these components of the world-view of senior policy makers in Ottawa are appropriate and should be given an important influence on Canadian policy. I was content to argue that they have had such an influence, though I concede that by clear implication I was critical of that influence and the policies that resulted. During the discussion at the symposium, Julian Payne of CIDA provided a spirited defence of some, indeed many, of the policy decisions that I had cited as evidence that senior officials had had a constraining influence on policy. This very defence, it seemed to me, could fairly be regarded as a final piece of evidence for the argument of the paper. Mr.Payne did not sound like a civil servant enamoured by his anonymity defending his minister's position. He sounded like, and surely in fact was, an able public servant defending policies which he had helped to shape and in which he strongly believed.

Notes

1. Robert Matthews and Cranford Pratt (eds.), *Human Rights in Canadian Foreign Policy* (Montreal: McGill-Queens University Press, 1988).
2. I am thinking, for example, for public policy, of Bruce Doern and Richard Phidd, *Canadian Public Policy: Ideas, Structures, Process* (Toronto: Methuen, 1983), and Michael Atkinson and Marsha Chandler (eds.), *The Politics of Canadian Public Policy* (Toronto: University of Toronto Press, 1983); and, for foreign policy, of David DeWitt and John Kirton, *Canada as a Principal Power* (Toronto: Wiley, 1983), and Kim Nossal, *The Politics of Canadian Foreign Policy* (Toronto: Prentice-Hall, 1985).
3. See, for example, Richard French, *How Ottawa Decides: Planning and Industrial Policy-Making, 1968-1980* (Toronto: Lorimer, 1980); Rianne Mahon, *The Politics of Industrial*

Restructuring: Canadian Textiles (Toronto: University of Toronto Press, 1984); Bruce Doern (ed.), *The Politics of Economic Policy* (Toronto: University of Toronto Press, 1985); and James Eayrs's magisterial five-volume work, *In Defence of Canada* (Toronto: University of Toronto Press, 1973-1985).

4. See, for example, DeWitt and Kirton, *Canada as a Principal Power*, especially pp. 36-46; Kim Nossal, "Mixed Motives Revisited," *Canadian Journal of Political Science* 21 (March 1988); and Cranford Pratt, "Dominant Class Theory and Canadian Foreign Policy: The Case of the Counter-Consensus," *International Journal* 39 (Winter 1983-4), especially pp. 99-117.

5. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations* (Ottawa: Supply and Services Canada, 1986).

6. *For Whose Benefit? Report of the Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs* (Ottawa: Supply and Services Canada, 1987).

7. "The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma," *Behind the Headlines* 42 (1984).

8. *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Supply and Services Canada, 1987), p. 28.

9. For a full discussion of the government's manoeuvring on this issue see Renate Pratt, "International Financial Institutions," in Matthews and Pratt (eds.), *Human Rights*.

10. For a full discussion, see Frances Arbour, "America's Backyard: Central America," in Matthews and Pratt (eds.), *Human Rights*.

11. For a full discussion, see Rhoda Howard, "Black Africa and South Africa," in Matthews and Pratt (eds.) *Human Rights*.

12. For a full discussion, see Ernie Regehr, "Military Sales," in Matthews and Pratt (eds.) *Human Rights*.

13. I discuss this at greater length in "Ethics and Foreign Policy: The Case of Canadian Development Assistance," *International Journal* 43 (Spring 1988).

14. Department of External Affairs, *Foreign Policy for Canadians* (Ottawa: Queen's Printer, 1970).

15. Ronald Manzer, *Public Policies and Political Development in Canada* (Toronto: University of Toronto Press, 1985), pp. 13-19.

16. Kim Nossal presents this point vigorously in "Cabin'd, Cribb'd, Confin'd? Canada's Interest in Human Rights," in Matthews and Pratt (eds.), *Human Rights*.

17. A similar argument is developed in Vicky Berry and Allan McChesney, "Human Rights and Foreign Policy Making," in Matthews and Pratt (eds.), *Human Rights*.

Teaching Human Rights to Foreign Service Officers and Other Public Officials: Developments in Canada and Abroad

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Allan McChesney

Résumé

Pour les pays qui affirment leur respect des droits de la personne, il convient aussi de voir à l 'éducation sur les principes et la pratique des droits de la personne de ses fonctionnaires et représentants gouvernementaux, qu'ils soient affectés à des fonctions internes ou aux affaires extérieures. Ce n'est pourtant que récemment qu'un entrainement formel sur les droits de la personne a été prévu pour des représentants officiels, au niveau national, le Canada et les Pays-Bas ouvrant la voie en la matière. Certaines agences des Nations Unies et d'autres organismes internationaux offrent aussi des ateliers régionaux sur des sujets particuliers en lien avec les droits de la personne; mais généralement, ces efforts ne sont pas aussi globaux que ne le sont les tentatives menées par les pays leaders en la matière.

L'histoire, les contenus et les approches éducatives du plan de formation quant aux droits de la personne donnée aux représentants à l'étranger de trois pays, sont commentés dans cet article. Il s'agit : (1) des cours donnés par et pour le Ministère des affaires étrangères des Pays-Bas; (2) au Canada, du projet-pilote de cours développés conjointement par le Ministère des affaires extérieures et le personnel et les professeurs du Centre de recherche et d'éducation humaine; et (3) des cours offerts par l'Agence canadienne de développement international, cours qui ont été élaborés conjointement par le Ministère des affaires extérieures, la Fondation canadienne pour les droits de la

personne et la Coopérative d'animation et de consultation. Même si les composantes de ces cours diffèrent sensiblement d'un programme à l'autre, les objectifs éducatifs implicites sont similaires : communiquer la connaissance des droits de la personne au niveau national et international; enseigner les applications pratiques de ce savoir; favoriser la discussion chez les participants de questions connexes de politique extérieure et intérieure; aider les participants à améliorer leurs capacités analytiques; et transmettre l'importance du respect et de la promotion des droits de la personne.

Cet article discute aussi d'un certain nombre de plans de formation internationaux, notamment d'un programme éducatif complet développé récemment pour le Secrétariat du Commonwealth. De plus, on précise quelques raisons spécifiques pour lesquelles les gouvernements soucieux de la défense des droits de la personne devraient prendre en main la formation quant à ces droits.

Enfin, l'auteur met de l'avant plusieurs propositions afin d'améliorer la formation relative aux droits de la personne destinée aux représentants de l'ACDI et du Ministère des affaires extérieures du Canada.

I. Introduction

The Universal Declaration of Human Rights dates from 1948, and major United Nations agreements flowing from it have been in force since the 1970s.[1] Acting upon commitments made as parties to these international instruments, Canada and other countries have proclaimed human rights in their constitutions, legislated against discrimination, launched initiatives to assist disadvantaged groups, and carried out related education campaigns. Given their espousal of the broad range of human rights standards, it would seem consistent for democratic governments to ensure that their functionaries and representatives have an awareness of human rights principles and policies and of the role of public servants in their implementation. Yet the idea of formal education on human rights matters for public officials has only recently gained prominence in Canada and elsewhere.

This paper will look at human rights training in Canada, in like-minded (liberal-democratic) states, and within multilateral agencies. There will be only incidental reference to the domestic field. The prime focus will be on Canadian human rights training for foreign service officers, with developments abroad providing some comparative perspective.

Although it was one of the first to do so, not until a decade after ratifying the international covenants[2] did Canada announce that it favoured human rights training for its foreign service staff. During 1984-1986, while conducting foreign policy research, this writer asked a number of Canadian officials in the Department of External Affairs (External Affairs) and in the Canadian International Development Agency (CIDA) whether they had received any instruction on human rights laws or mechanisms relevant to Canada's international relations. No one interviewed had had in-service training focused on human rights. It was one of the many areas of knowledge that one was expected to acquire on the job. Human rights training for foreign service officials became a facet of government policy and of professional formation for External Affairs and CIDA in 1986[3] and 1987[4] respectively.

II. Why Offer Human Rights Training When a Diplomat Has So Much to Learn Already?

It seems axiomatic that among the critical attributes of an ideal foreign relations staff are good political instincts, diplomatic skills, the ability to assess unique factual situations, and the talent for making wise judgments—all of which are gained largely through professional and life experience. There are some kinds of knowledge and operational aptitudes, however, that require formal training sessions as well as learning-on-the-job: second and third languages, computer usage, national security precautions, and, yes, awareness of human rights obligations and monitoring methods.

The assertion that a distinct training course in human rights is necessary to convey information adequately to public officials rests on the premise that cognizance of human rights laws and mechanisms deserves some priority in the cluster of capabilities expected of a government functionary or agent. Although human rights matters are indeed only one of many components in the foreign policy mix, there are good reasons for initiating and maintaining a special-focus training program in this area. To achieve a clearer picture, the list of reasons given below is centered on Canada (and particularly on its foreign service), but most of the statements apply *mutatis mutandis* to any nation that supports international human rights norms:

1. Commitment to the concept of human rights training for public sector officials begins with the assumption that the promotion of human rights domestically and internationally accords with and attempts to reflect Canadian ethical values. Among the founding principles proclaimed in the UN Charter of 1945, and reiterated in the Universal Declaration of 1948, is that respect for the equal and inalienable rights of all

human persons is the foundation of freedom, justice, and peace in the world; and that everyone has an obligation to cooperate to promote these ideals.[5] As a party to these agreements, Canada is bound to implement them. Presumably, Canada would also wish to foster the principles enshrined in Part I of the Canadian Constitution, 1982, which is the Canadian Charter of Rights and Freedoms.[6]

2. Another presupposition here is that it is in Canada's long-term political and economic interests to have rights-respecting, hence politically more stable, trading partners.
3. Public statements of Canadian cabinet ministers responsible for external affairs matters have underlined the considerations stressed in paragraphs 1 and 2 above, since at least 1977.[7]
4. Canada has made commitments to uphold every major UN agreement on human rights,[8] as well as a good proportion of the related International Labour Organization conventions relevant to employers' and workers' rights.[9] These instruments carry with them an obligation to publicize and promote human rights, as well as to implement the specific terms.[10]
5. All government officials must deal with a range of competing pressures and priorities. In the atmosphere surrounding Canada's foreign service personnel, pre-eminence is given to trade promotion, to fulfillment of obligations assumed as part of economic and security alliances, and to assurance of good relations with the United States. Given these preoccupations, a special focus on human rights concerns is required to ensure that even minimal attention is attracted to them.
6. An awareness by government staff that human rights must be addressed by someone does not guarantee integration of human rights notions into daily work and policy setting. As can happen with environmental protection and other relevant areas, there is a danger that human rights will be treated as a collateral matter, or even a nuisance. "Let the Human Rights Unit worry about that; my job is to increase Canada's international market share." Only a small number of functionaries has direct involvement in the human rights field: by representing Canada or acting as independent experts in international fora; and by monitoring, and reporting on, Canadian compliance with international instruments. Yet anyone working in any branch of the foreign service may be involved in planning, financing, carrying out, or evaluating programs that touch on the human rights of people in recipient or host countries.

7. In order for human rights to be taken seriously by the foreign service in general, the government needs to demonstrate that its upper echelons attach some importance to the subject. The provision of a formal training course for all professional streams and the concomitant human rights reference materials manifest a desire to give a heightened priority to incorporation of human rights into *all* policy areas.
8. Foreign service officials often need to prepare statements to explain Canada's own human rights record in multilateral fora. This is particularly the case with respect to treatment of aboriginal peoples. Examples of other controversial areas are refugee policy and workers' rights. A trade official or a geographical desk officer may well need to know the gist of relevant human rights instruments or how to obtain rapid access to this information.
9. Using interactive teaching methods designed for motivated adult trainees, a well-designed human rights training course can help to prepare officials for the difficult tasks of gathering factual information, ensuring its credibility, assessing its significance in a foreign country and culture, reporting it accurately, and responding in ways that accord with their government's support for the promotion of human rights. Most people cannot readily learn such investigative and analytical skills simply by reading documents, or by absorbing videotaped lessons or lectures.
10. In the international arena, it may sometimes be necessary to point out the perceived failings of other governments or political systems. The meetings of the Conference on Security and Cooperation in Europe are a case in point. An awareness of relevant regional and international documents is a necessary complement to accurate factual information and analysis.
11. A large proportion of Canada's human rights foreign policy is made through ministerial and departmental responses to parliamentary committee reports and questions in the House of Commons, to front-page newspaper stories, and to coverage on television and radio. A continual source of inquiry and suggestion comes from non-governmental organizations. How can public servants (and the government) respond adequately to, and indeed anticipate, concerns of the public, parliamentarians, and the press and broadcast media without the necessary human rights grounding?
12. Turning to the development-assistance dimension of foreign policy, one can state that the principal aim of foreign aid is to assist in improving societal participation and the life circum-

stances of the poorest and least advantaged peoples in less-developed countries.[11] To put another cast on this idea, one could say that development assistance policy ultimately aims to promote individual and group human rights. Both donor and recipient countries have responsibilities to monitor the development process, and to ensure that, to the extent possible in the real world, the interdependent goals of development and human rights are mutually supported.[12] Enriching the knowledge base and sensitivity of foreign service personnel who do or will deal with official development assistance (ODA) seems a logical component of such an approach.

13. Aside from any monitoring and reporting functions that they may have because of overall policy links between ODA and human rights, aid officers and agencies may wish to promote human rights at the project level. These may be seen as simply an element of "good" development, i.e., development that is fairly shared, environmentally and culturally appropriate, and sustainable. "Good" development is thought to be more likely when there is timely consultation with and participation by women, indigenous peoples, disadvantaged minority groups, and the poorer segments of society generally, in the planning and implementation of development projects.[13] Surely this implies a need to respect and promote democratic and social human rights. These goals will be hard to achieve in countries where attempting to deliver even minimal ODA is profoundly difficult. Yet providing basic knowledge and skills to the foreign service officers concerned will at least empower them to seek rights-based progress.

III. National Programs Teaching International Human Rights

The Netherlands is generally credited with having initiated the practice of providing formal training in international human rights for the government officials of one's own country. This survey will, therefore, begin with an examination of the Dutch experience. It will also touch very briefly on national initiatives taken by Norway and Australia. Detailed treatment will be given to Canada's pilot program carried out at the Department of External Affairs, also to a subsequent series of courses offered through the Canadian International Development Agency.

The Pioneer in Human Rights Training: The Netherlands

Of the examples examined in this paper, the scheme for training of Netherlands foreign affairs staff is not only the pioneering effort, but also apparently the most extensive to date. Like the Canadian courses to be discussed below, the Netherlands training plan arose out of a comprehensive foreign policy review that fostered a magnified focus on human rights in external relations thinking. Following publication of a 1979 parliamentary memorandum,[14] the Dutch government took a number of initiatives to assure a greater presence for human rights in Netherlands international affairs policy and practice.

One of the outcomes of the Dutch foreign policy evaluation was the creation of a Human Rights and Foreign Policy Advisory Committee.[15] In 1984, Holland's Ministry of Foreign Affairs published, as a package, assessments and recommendations of this committee concerning the ministry's role in the promotion of human rights, together with the response of the minister to this analysis.[16] A distinct area addressed thoughtfully in this compendium was human rights training for external affairs personnel.[17] The document makes it clear that, as of 1984, the human rights portion of the professional training program for the foreign service would be expanded and qualitatively improved. The guiding premise was that education on human rights is "an essential part of the promotion and protection of human rights in the context of Dutch foreign policy" and that the existing course content (though seen to be already as good as or better than that available in other European states) was "not commensurate with the importance attached to . . . human rights in Dutch foreign policy."[18]

At least since 1984-1985, the Netherlands training model has been the most extensive in the world in terms of length of instruction and degree of seriousness attached to it. There has been some evolution in the program offered by the Dutch Foreign Ministry since 1984, but the basic content does not appear to have changed significantly from 1985 to 1988.[19] The course offered in 1988 consisted of two parts (with apparently no important change in 1989). The presentation begins with what is termed a "theoretical" segment, held as part of a lengthy formal period of instruction in international affairs given to young foreign service officers. This takes place at the Institute for Foreign Relations ("Clingendael") in The Hague. The human rights component, lasting one week, consists of lectures from Dutch scholars and activist human rights experts. Participants also act in relevant role plays, and they prepare a research paper in collaboration with a course supervisor.

What is referred to as the "practical" side of the program is later taught at the ministry. During this three-day portion, the officers meet with policy makers and representatives of non-governmental organizations such as Amnesty International. The focus is on the practice of human rights at a country-focus desk or in the field, i.e., on a diplomatic posting or at a permanent mission to an international organization.

The Netherlands course now has the advantage of sophisticated reference material produced specifically for Dutch foreign service officers. One of the bound volumes is the "Vademecum Mensenrechten," a 15-part practical human rights guide (available only in Dutch). This includes a full glossary and comprehensive cross-index. In addition, there is a 152-page compilation of international human rights instruments. These volumes include material related to the United Nations and the Third World, including regional international instruments (such as the African Charter of Human and Peoples' Rights). There is also, of course, an emphasis on European human rights mechanisms in which the Netherlands participates, including the organs supervising the implementation of the European Convention on Human Rights and the Conference on Security and Cooperation in Europe.[20]

Breaking New Ground in Canada

The first comprehensive human rights training courses for officials working in Canada's foreign service were planned and presented during 1987 as a joint undertaking by the Department of External Affairs and the Human Rights Research and Education Centre, based at the University of Ottawa.[21] External Affairs and the Human Rights Centre worked together in the design of the curriculum, in the setting of course objectives, and in evaluation. The incentive to commence formal training was a recommendation made in 1986 by the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations (the Hockin-Simard Committee). The committee recommended that External Affairs "follow the example of the Netherlands Ministry for Foreign Affairs in establishing in-service training and refresher courses in human rights *for all its officers*" (emphasis added).[22]

Before the Hockin-Simard Report, External Affairs had not deemed it necessary to carry out detailed training in human rights for its staff. A short course for some junior employees was offered in-house by the human rights unit of the Human Rights and Social Affairs Division in the autumn of 1986. In December 1986, the official government response to the Hockin-Simard Report declared that human rights must be an integral and important part of foreign policy,[23] and accepted the value of human rights training, but did not adopt the recommendation to establish courses for "all its officers." The response states: "The Department of External Affairs will begin regular training in human rights prior to officers being posted abroad and for returnees working as geographical desk officers and those administering policy on export controls."[24]

Although the Canadian government provided a more limited commitment on training than had been recommended, it did focus on personnel most likely to encounter human rights problems first hand. It is evident that individuals being posted abroad, together with their counterparts staffing geographic desks in Ottawa, would benefit from instruction. The specialized human rights unit of External Affairs is quite small, numbering at any time one to three persons, and most human rights matters are dealt with by officers with geographical responsibilities.[25] "Those administering policy on export controls" have the duty to ensure that strategic goods are not exported to countries that are serious violators of human rights.[26] For the reasons set out in part II above, however, it would be advisable for the government to follow the Hockin-Simard recommendation to provide human rights information and sensitivity training for a wider spectrum of External Affairs personnel.[27]

Realistically, the pilot courses had to begin with a limited enrollment.[28] The course planners had hoped to involve more managers, but most trainees were in their first few years in the public service. There are reasons to enhance human rights knowledge and sensitivity early in one's career, to provide a base on which to build, and to encourage continuity of approach. Nevertheless, there was an effort to involve a larger contingent from middle and senior management, and a special course for higher executives was tentatively agreed on for 1988. The merits of including them are the following: (1) managers must make decisions on policies, programs, and projects that might impact on human rights, (2) it is more likely that awareness of Canada's human rights responsibilities among junior officers will lead to integration of human rights principles into External Affairs work if the climate for such efforts is favourable, (3) the presence of management as learners (as well as teachers) sets a visible, tangible example for junior officers, (4) a manager who has been through a human rights course may or may not be committed to the promotion of human rights, but he or she will be more knowledgeable about the subject and aware that the government attaches importance to it, (5) that awareness, presumably, will be conducive to all concerned acting in a more informed way, and thus treating human rights more seriously in all aspects of external relations work.

To obtain a better fit of the pilot course to the requirements of its learner-participants, a survey, the "Teaching Needs Assessment,"[29] was carried out. By telephoning a representative number of scheduled trainees and compiling their responses to a questionnaire,[30] it was hoped to prepare an approximate profile of the student body. Questions were directed at trainees' pertinent education and experience, their perceptions of gaps in their knowledge and in government programs, preferences as to subject areas, and opinions on appropriate educational methods. Aside from its use in compiling a learners' profile, a beneficial outcome of conducting the assessment was that before they attended the first course, many participants were made aware of its seriousness and were challenged to apply their minds to the human rights field. By the time they began the course, containing elements which they had individually requested, the trainees felt a sense of ownership and commitment, and they wanted it to be a worthwhile experience. Thus there may be some benefit to conducting such a survey even if a training program is consistently aimed at a particular target group.

Another strategy utilized to impress on the participants the seriousness of the course was to insist that opening remarks be given by a high-ranking official of the department. This was deemed a good way to indicate that knowledge of human rights had "arrived" in terms of importance to External Affairs—not only as a matter of responsibility, but also as a factor in potential career growth for those who took the course.

The planners of the inaugural course attempted to ensure that the participants would become knowledgeable about Canada's official approach to human rights and how this might affect their work at Ottawa headquarters and in the field. There was, in addition, an effort to present a range of perspectives with which the foreign service officer would need to contend: the views of domestic and international non-governmental organizations, the views of human rights held by other cultures and other ideologies, and the views of victims of human rights abuse.

The stated objectives of the External Affairs pilot courses were: (1) to increase participants' knowledge of international and national human rights systems, (2) to facilitate discussion of the impact of human rights issues upon Canada's domestic and foreign policies, (3) to provide participants with opportunities for the practical application of the course material through a series of exercises, (4) to help participants gain a better appreciation of the importance of human rights in their work, and (5) to assist participants in the development of their analytical capacity.

The preparation for both courses included consultation among the Human Rights and Education Centre, its contractual associates, and External Affairs concerning the priority of subjects to be covered. As an illustration, the team assembled by the Human Rights Centre forecast that more attention might need to be focused on refugee problems and aboriginal rights than was called for in the provisional course outline. The joint planning group acted on these instincts to ensure that these matters received significant coverage in the first course. The prediction of trainee interest in these subjects was borne out, as participants in the initial sessions suggested that even more discussion of refugee matters and indigenous peoples' concerns was warranted. Refugee problems must be dealt with frequently by Canadian embassy staff on foreign postings, as well as by headquarters personnel; and the area of aboriginal rights is one that Canada must address often, sometimes in defence of its own record, in the international arena. Both subject areas are of continuing and profound interest in Canada to non-governmental organizations, to the general public, to politicians, to the media, and apparently to individual foreign service officers. These subjects were given an even higher profile in designing the second pilot course.

While the length of each course (three days plus some outside assignments) was less than that of the Dutch courses discussed above, this represented a marked advance on the virtually non-existent training available previously. Nevertheless, one cannot learn a lot in such a short time, much less retain a large amount of knowledge. In order to support the three days of learning over the long haul, most of the course materials were provided in a comprehensive reference manual and in accompanying booklets. This cluster of reference materials was designed to be a mini-library on human rights, particularly appropriate in overseas postings. In addition to all relevant international instruments and commentaries on them, trainees were provided with "how to" checklists, charts showing country ratification of international instruments, relevant extracts from published articles, parliamentary reports and speeches, flow diagrams covering national and international human rights links, and several bibliographies, including one on rights and foreign policy and another on fact-finding relevant to assessment of the human rights performance of other countries.[31] There were some revisions and excisions of documentation prior to the second pilot course, making it somewhat less voluminous.[32] One of the additional documents provided to participants in October 1987 was a newly compiled table with specifics about international human rights instruments to which Canada is a party.[33]

Within the three-day time-frame, the last half-day was set aside for External Affairs to carry out instruction *in camera*, i.e., without involving outside educators. It was thought important to permit participants to discuss in complete candour some actual international affairs problems handled by the foreign service.[34] In this setting, more seasoned government people could frankly share their views on matters of national security, perceptions of particular countries, hints on the machinations of multilateral institutions and on how to interrelate bilaterally with other governments, and advice on relations with particular non-governmental organizations active in the realm of human rights.

An important component of this concluding session was discussion of the balance to be achieved between maintaining good relations with a host government and being able to report objectively on the human rights situation in a country.[35] The same problem had to be considered with regard to non-governmental organizations, often the chief sources of information on human rights—information that might contradict the picture presented by a host government. The need to ensure objectivity and accuracy in specific cases involving alleged human rights abuse was also covered, in both the open and closed sessions. Experienced External Affairs staff were able to relate real-life examples of complaints that had proven false as well as true. Given that the October 1987 session was close in time to the Commonwealth Heads of Government Meeting in Vancouver, some attention was devoted in the closed segment to issues that were arising there, such as Commonwealth strategies on Southern Africa and Canada's approach to aboriginal rights at home and abroad.

The main body of teaching, during the first two and one-half days, covered the following areas:

1. The history of modern human rights mechanisms, primarily as developed since the Second World War through the United Nations.
2. The machinery of enforcement available under UN international instruments and within the UN generally.
3. Refugee law internationally and in Canada, and the role of the UN High Commissioner for Refugees.
4. The Canadian Charter of Rights and Freedoms, and national and provincial mechanisms for promoting human rights and combatting discrimination.
5. The rights of indigenous peoples in Canada and internationally, and efforts to promote these rights.
6. African, Asian, and Latin American perceptions of human rights and efforts to promote them, and consideration of the concept of "cultural relativism" on an international basis.[36]
7. East European and "socialist" views of human rights, and the evolution of the Conference on Security and Cooperation in Europe (the Helsinki Accord and subsequent developments).
8. Human rights in the context of three elements of Canada's overall foreign policy:
    - official assistance for international development
    - international trade
    - international peace and security.

9. The goals and roles of non-governmental organizations (NGOs), and their interaction with foreign service personnel in the field of human rights.
10. Problem-solving workshops dealing with:
    - investigation and fact-finding related to human rights violations
    - principles and criteria for assessing and evaluating cases
    - contacts with NGOs for the purpose of obtaining information
    - appropriate reporting and remedial reaction
    - preparation of letters and memos concerning international human rights cases or country situations.
11. Problem-solving workshops dealing, as well, with:
    - special human rights concerns of women
    - racial discrimination
    - minority religious rights
    - torture
    - the human rights facets of humanitarian assistance (emergency relief).

The pedagogical theory that governed the External Affairs courses was that professionals, and adults generally, learn better if they are involved in the learning process rather than being only passive recipients of speeches and documents.[37] The majority of trainee evaluations spoke favourably of the case-study and role-playing approach. Some wanted even more. Although participatory learning techniques were dominant in the teaching methodology, certain topics, particularly introductory overviews of a regime of law, are best taught by experienced human rights law teachers. Lecturers were selected who would not be merely "talking heads" but would challenge the trainees by means of case studies and humourous rapport. The speakers who fitted this characterization were uniformly praised in evaluative commentary.

There were other speakers, from government and the non-governmental community, who were also praised in students' and course planners' assessments. Their presentations seemed to work best, however, when made as part of a panel discussion that presented contrasting viewpoints and encouraged trainee input. A few of the participants criticized non-governmental presenters whom they felt had dwelt too much on their personal perspectives or that of their employer organization, without giving a balanced view; a number of trainees, however, expressed gratitude for the opportunity to hear and assess the non-official line.

It is worth incorporating evaluative instruments into any form of teaching in order to facilitate continued improvement. Since these were pilot courses, it was especially important to build formal evaluation into the educational process. There were four types of objective evaluation applied to each of the two External Affairs courses.[38] There was also an opportunity presented for trainees to carry out subjective evaluation.[39]

The evaluative statements received from all sides were basically favourable to both pilot courses. The main source of critical commentary and suggestions for improvement was the chief organizers themselves. (A critique of these courses appears later below.) A review of the evaluations received from over 40 trainees showed that there was general agreement among trainees, evaluators, and organizers on the overall success of the courses, on the value of their content, and on the teaching methods used. As a result, plans were made in late 1987 and early 1988 for an expanded series of courses to be designed and conducted by the same joint team during 1988. Those plans included a special course for senior managers and enhanced francophone instruction.

External Affairs was not able to follow through with the program.[40] During 1988, however, the Canadian International Development Agency initiated its own human rights training course. As will be discussed below, CIDA's course has incorporated the teaching methods of, and a few of the planned improvements that arose from, the External Affairs/Human Rights Centre courses.

The Canadian International Development Agency Follows Suit

The impetus for the human rights courses at External Affairs had been the foreign policy review culminating in the Hockin-Simard Report of 1986. Similarly, CIDA embarked on a program of human rights training for its staff in the wake of the 1987 report of the House of Commons Standing Committee on External Affairs and International Trade (the Winegard Committee). A number of submissions to the committee had proposed that human rights training be offered to CIDA personnel.[41] The Winegard Report put forward that recommendation which was adopted by the government in these words: "Canadian development officers will receive a pre-posting orientation program to make them more aware of human rights, and to give them a better understanding of the importance which the government and the Canadian public attach to this question."[42]

About half of the trainees attending the initial CIDA-based course (June 1988) were, in fact, from External Affairs. In a number of respects, this was a logical turn of events, and this practice continued during subsequent courses. The government had made commitments to provide human rights training for both foreign policy centres. CIDA had the funds to hire contractors to assist with their course and to cover other production costs, whereas External Affairs did not. In devising their first course, CIDA was able to build upon the External Affairs experience. As noted earlier, the External Affairs/Human Rights Centre syllabus and instruction recognized that embassy staff must often intermingle responsibilities from many "streams" of responsibility, and that all streams must have some awareness of what the others are doing.[43] Some foreign service officers working at CIDA had taken part in the External Affairs courses. Two CIDA officials attended evaluation meetings for the External Affairs training. One of these individuals, a senior training official, observed a large portion of the educational sessions; and the other, a policy official, acted as an instructor for a portion of the May 1987 course.

Not surprisingly, the teaching methods used in the CIDA courses have been similar to the adult education techniques successfully employed in the External Affairs courses—a combination of lectures, panel discussions, and work on case simulations.[44] It is a general tenet of professional training at CIDA that role-playing and interaction form an important part of the learning process.[45] Moreover, the planning team for its human rights courses included staff from CIDA and from External Affairs who were familiar (as co-organizers, teachers, or observers) with the two courses conducted under the latter's aegis.[46] Also involved in the planning and implementation have been personnel or consultants associated with the Canadian Human Rights Foundation and with the Coopérative d'animation et de consultation.

By almost all measurements, the CIDA courses have been a success. A few facets can be viewed as improvements on the External Affairs pilot courses. The CIDA courses have been able to achieve certain goals that were agreed on as worthwhile objectives by the organizers of the External Affairs courses, but which had been unattainable for reasons of time or (primarily) because of budgetary restraints. For instance, the CIDA courses have included a larger contingent of managers participating as trainees. CIDA has also been able to follow through on the idea of having entire courses in English and in French,[47] and on the proposal to enhance the learning environment by conducting the sessions at a site removed some distance from headquarters.[48]

An innovation of the CIDA courses is their usage of case simulations centred on actual file materials from government records. This adds an element of reality to the problem-solving, particularly on occasions when officials with first-hand experience can be present. To date, the case study sessions have focused on Haiti and Sri Lanka, countries in which serious issues of human rights and development have shared the stage, and in which Canada has attempted to play an important role. The case study scenarios that had been used in the External Affairs courses were also derived from real problems dealt with by Canada (including programs and projects related to Sri Lanka and Haiti), but these had not used actual file extracts.

The instructional materials provided for the CIDA courses show some improvement over those prepared by this writer for the External Affairs/Human Rights Centre pilot sessions. Like the latter, they are primarily collections of international instruments and Canadian foreign policy statements, and excerpts from works discussing human rights issues. The main binders, however, are more compact and portable than those compiled for the earlier courses. They also do a better job of integrating issues for discussion directly with the relevant bibliographic material.[49] One original document included could prove useful as a resource for personnel posted overseas; it sets out guidelines for judging and reporting on the status of human rights in host countries.[50]

As with the External Affairs/Human Rights Centre program, the CIDA/External Affairs courses have built in evaluation mechanisms to foster improvements. At the time of the first CIDA sessions in June 1988, the planners contemplated doing a follow-up with the students six months later. This idea was not carried out. Records of trainees have been kept, however, in the hope of doing a follow-through later.

Roughly half of the trainees taking CIDA's courses have continued to come from the various foreign policy streams at External Affairs. There is no intention that all staff at either agency take the human rights courses. There is an effort to encourage staff being posted overseas, particularly to trouble spots, to enrol, but it is not compulsory. No doubt, the favourable assessments which student evaluations reveal help to influence others to attend. CIDA has provided adequate support and resources to launch the human rights training properly, and the course organizers remain committed to the program. But it appears that there may not be a serious enough resource commitment from CIDA to permit all personnel in the target groups to receive instruction in the near or medium-term future.

Rethinking the Canadian Foreign Service Courses

A number of comments have been made concerning aspects of the External Affairs/Human Rights Centre human rights courses of 1987 which their planning team had hoped to revise. As already noted, some of these improvements were put into place by the organizers of the CIDA/External Affairs courses held between June 1988 and June 1989, along with a few innovations. This section discusses matters, which in this writer's opinion, require attention in any revamping of the current training program.[51]

A few suggestions arise from comparison of the two Canadian human rights training schemes with that offered in the Netherlands.

For example, the Dutch course was considerably longer than either of the Canadian ones. The External Affairs/Human Rights Centre pilot courses were somewhat lengthier than the CIDA/External Affairs courses (now running two evenings and two days), and it is arguable that the latter are not sufficiently comprehensive.

Because of shared human rights concerns, and sometimes shared duties on posting, there are good reasons for having some joint human rights training for CIDA and External Affairs personnel. Nonetheless, External Affairs should consider the advantages of carrying out some separate training. Certain important topics appear to have received less attention than would seem appropriate for the staff of External Affairs who share in the sessions, particularly for those not in the development stream. It will be recalled that the External Affairs/Human Rights Centre courses covered three days, plus evening assignments, plus time to consider core documents received in advance. One part of the human rights training given to the Netherlands foreign ministry staff lasted a week, and there was instruction additional to this.

Although many of the following subjects may have been touched on in conjunction with case studies or were raised as part of wider discussions, they seem to have been given reduced treatment in the CIDA/External Affairs courses, as compared with the earlier External Affairs/Human Rights Centre courses:[52] international refugee agreements and immigration and refugee policy; the Helsinki Accord and the European security process; the rights of indigenous "populations" or "peoples" in Canada and abroad; domestic Canadian human rights law and values; special concerns of women with respect to human rights; "women in development" issues; the rights of minorities; South African issues; regional human rights instruments, including African and inter-American agreements; links between human rights and trade (including arms exports); and links between human rights and peace and security.[53]

All three of the programs thus far examined involved experienced government staff and academics as instructors and facilitators. The CIDA courses, however, have not provided trainees with as much opportunity to learn the perspectives of equally experienced non-governmental activists. In the External Affairs courses, participants had been able to hear, assess, and question the views of NGOs on a variety of issues. It has been the practice, in the CIDA training, to invite only one NGO speaker active in international human rights.[54] While NGO resource people and individual course participants will not always see eye-to-eye, there is educational benefit in being challenged. Moreover, NGO instructors encountered through the human rights seminars can later prove to be a helpful source of advice and specialized information on specific country situations during a foreign service officer's career. Such exchanges have certainly occurred over the past two years between trainees and instructors who met during the External Affairs/Human Rights Centre courses in 1987.

Another matter worthy of comment is the limited participation of women as instructors in the CIDA courses. On one occasion, trainees were addressed by the president of CIDA, Margaret Catley-Carlson, and at one of the courses, the segment on "cultural relativism" was led by a distinguished female academic; but these were exceptions.[55] One of the chief organizers and approximately one-third of the instructors and facilitators in the External Affairs/Human Rights Centre courses were women, all of them knowledgeable in the human rights field.

Finally, a few suggestions are offered for supplementing the instructional documentation given the CIDA course trainees. In comparison to the materials provided for the External Affairs/Human Rights Centre courses, here are some matters for which the documentation in the CIDA/External Affairs courses has significantly reduced coverage: (1) the articles of the UN Charter relevant to human rights, (2) documents focusing on South Africa, (3) pertinent passages of Chapter 6 of the Winegard Report, and of the government's response, on human rights and foreign policy (recommending and accepting that one criterion for deciding the eligibility of a country for status as a core development assistance recipient should be its human rights record), (4) discussion of Canadian and international aboriginal rights, (5) the sections of the Canadian Constitution dealing with aboriginal rights, (6) agreements and legislation on refugee problems, (7) the Convention on the Elimination of All Forms of Racial Discrimination, (8) regional instruments, such as the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights, and (9) the concepts of a right to peace and a right to a safe environment.

It is likely that some of these gaps were deliberately chosen, with the intention of limiting the amount that a trainee is expected to try to absorb. Yet they seem inappropriate, especially for External Affairs staff not in the development stream, and some separate training may be the best answer. In revising its course documents, CIDA may wish to consider a few additional suggestions. (Most of these proposals were originally made by the present writer by way of improvement upon the materials devised for the External Affairs/Human Rights Centre pilot courses.)

1. Provide a compact core-training binder, perhaps even slightly less voluminous than the already fairly trim binder used in the CIDA courses.
2. In the separate packages of domestic and international instruments, include those areas that are not now adequately covered in the CIDA materials (see also suggestion #5 below in this regard).

3. Provide an additional *reference* manual to be retained, along with further materials that might be especially useful to someone on an overseas posting.
4. Provide sufficient indexing and cross-referencing among all of these documents to permit their efficacious use in the absence of an instructor.
5. Prepare supplemental packages focused on particular world regions, to be given to staff (along with a relevant short course in human rights) just before they are posted to these regions.
6. Where appropriate, prepare videotapes of particularly effective instructors or guest speakers.
7. Prepare videotape and document packages to assist in instruction in agency field offices.

A Few Words on Other National Programs

Both Norway and Australia now offer some human rights training for their external relations officials.[56] In Norway, one or two half-day lectures per year are given to new entrants into the diplomatic service. In Australia, one day of teaching on human rights is provided in the training program for new recruits. Such efforts represent only a beginning, however. One hopes that other countries will choose to borrow much from the experiences of Canada and the Netherlands.

IV. Training Offered for Government Officials by Multilateral Agencies

Particularly in the last four years, courses have been presented for public officials under the auspices of the UN Human Rights Centre, UNITAR, UNESCO, the Commonwealth, and other multilateral agencies. Most such courses have provided training for educational personnel responsible for inserting human rights into school curricula. Seminars have also been conducted for prison and correctional officials. And there has been an increasing number of symposia arranged for government staff responsible for completion of national reports for submission to the UN pursuant to the rules of international human rights machinery. Extensive training has been developed and conducted by the International Labour Organization in the field of employment rights and responsibilities.

These international bodies have the funds and personnel to help a country or regional grouping organize and present a course targetted to local needs. This is of particular importance to states that have inadequate financial and other resources to launch a training program on their own.

UN Agencies

A catalyst and agent for human rights teaching of public officials is the UN Institute for Training and Research (UNITAR). Its training activities are carried out in conjunction with the UN Centre for Human Rights.[57] Most of this teaching has been organized for government officials of particular world regions. Until recently, they have focused primarily on the administration of criminal justice. Such courses were conducted five times from 1972 to 1986—in Japan, Egypt, Costa Rica, and Australia (twice). There was a related 1977 seminar held in Japan on "Safeguards against Deprivation of the Right to Liberty and Security of Person." Each course was conducted in cooperation with the host government. The sessions and documents were in English, except for the 1973 Cairo course, which also used French and Arabic.

Following a major review in the early 1980s of all of its training initiatives, UNITAR embarked on what it terms "a cycle of regional training courses for government officials from the developing regions." The main thrust has been teaching people who have the responsibility to prepare national reports for submission to monitoring bodies established under various international human rights instruments. Training sessions for such functionaries were held in Barbados (1985) for the English-speaking Caribbean and Suriname, in Dakar (1986) for francophone West African countries, in the Philippines (1986) for South Asia and the Pacific Region, in Lusaka (1987) for anglophone African countries, and in Kigali, Rwanda (1988) for other francophone African countries. There was also a course in Lisbon (1988) for Portugese speakers.

The report on the Lusaka workshop illustrates the general approach taken in these UNITAR regional courses. Each African country in which English is the primary European language, as well as Mozambique, was invited to select two participants. The intention was to involve officials responsible for drafting national reports under human rights instruments—often a joint responsibility shared by ministries of foreign and legal affairs. After instruction on UN and regional human rights mechanisms and on the roles of reporting and documentation, participants were guided through the drafting and submission of a (fictitious) model national report.

The UN Centre for Human Rights, which (as noted above) works with UNITAR, also has its own program of advisory assistance and training. The centre, for instance, sponsored a training course for officials of Spanish-speaking countries of the Caribbean basin, held in

Costa Rica from November 23 to December 4, 1987. The course was jointly organized with the Inter-American Institute of Human Rights, and received support from the UN Latin American Institute for the Prevention of Crime and the Treatment of Offenders. The main objective resembled that of UNITAR's Lusaka workshop—to train government officials in the preparation of national reports on human rights compliance. A course on "the administration of justice" was also held for Arabic speakers in 1988 (Tunis).[58]

A number of workshops for educational officials or teachers have been sponsored by UNESCO. Some of these courses have also enhanced the human rights awareness of government administrators from non-educational fields. For example, at the course on "teaching human rights" in the Asia and Pacific Region (Bangkok, October 1987), some of the participants sent by governments were not primarily concerned with education.[59]

Other Specialized Agencies

Many workshops that increase the human rights sensitivity of public officials are carried out by specialized international organizations not part of the United Nations. The International Committee of the Red Cross (ICRC) is a leader in this regard.[60]

In March 1988, a six-day seminar focusing on prisoners' rights was held in Harare, Zimbabwe for heads of penitentiary institutions in more than twenty African states. One of the outcomes was a recommendation for wider training of prison officials on the UN Standard Minimum Rules for the Treatment of Prisoners. The ICRC is best known for its work in humanitarian law, i.e., the rules for the treatment of people caught up in armed conflicts. Dissemination of these rules to members of military forces is one approach of the ICRC (and the Red Crescent movement) to foster respect for human rights. In Khartoum during February 1987, for example, 26 senior officers of the Sudanese armed forces and a number of top government officials attended seminars on international humanitarian law.

The Commonwealth Secretariat

The Commonwealth of Nations has considerable experience in arranging educational programs for its membership. Recently, these endeavours have included more emphasis on human rights education.[61] An example is the session on "Human Rights and the Caricom Diplomat" presented at the Diplomatic Training Seminar for Caribbean Countries, held in Trinidad and Tobago in 1987.

More generally, the Commonwealth Secretariat has commissioned a comprehensive core syllabus to be used for human rights training of public officials in Commonwealth countries. One component of this instructional package is an extensive listing of related instructional and reference sources, based on a bibliography prepared for the Canadian International Development Agency in early 1988.[62] These resources were interposed with commentary, broad issues to cover, and specific points for discussion related to more than 20 separate human rights topics—all in a draft *Syllabus* for human rights training of Commonwealth public officials.[63] The draft *Syllabus* began with an introduction that, among other things, explained how the document was to be used as a core instrument for human rights training and discussed effective teaching techniques.[64]

The *Syllabus* has been further refined, and it was tested at the Workshop on Human Rights Training for Commonwealth Public Officials, held in Banjul, The Gambia, June 1-2, 1989.[65] The workshop was run by the Human Rights Unit of the Commonwealth Secretariat, in cooperation with the host government. The seminar served the dual purpose of testing the draft *Syllabus* in practice and employing it to provide training for a dozen officials from West Africa who will conduct human rights training in their own countries. The *Syllabus* will now be slightly revised to reflect suggestions that arose from the experience of the workshop.[66]

The amended *Syllabus* is now slated for publication as *Manual on Human Rights Training for Public Officials*, which may include some new documentation prepared specifically for the workshop and additional material based on input from the trainees.[67] It is intended that the Banjul Workshop be the first in a series of regional seminars. The objective is "to promote the use of the *Manual* to heighten awareness of human rights issues among all levels of public officials."[68]

V. Concluding Observations

In Canada, as elsewhere, efforts at increasing the attention focused on human rights has been a slow process, facing bureaucratic resistance. In the foreign policy field, there are certain operating imperatives that can inhibit the flowering of a human rights consciousness, such as the primacy of trade expansion,[69] Canada-United States relations, and participation in Western diplomatic, economic, and military alliances. The government of every country has analagous policy priorities. In order to ensure that even minimal or occasional due is paid to human rights concerns, formal education of staff appears essential.

Countries that espouse the promotion of human rights in their foreign policy are coming to acknowledge the wisdom of comprehensive professional training for their external affairs officials. On the domestic front, in any country that is serious about fostering human rights, it makes sense to educate those who are in a position to promote or to act in breach of civil and political rights, such as law enforcers and other officials empowered to act on behalf of the state against the individual. It seems wise, as well, to educate national planners on the need to realize not only political rights, but also economic, social, and cultural rights in the development planning process.

The place of human rights in the world consciousness and in international relations is important and growing. The continuing processes of codification of human rights norms and of ratification of major international instruments necessitate enhancement of the knowledge and sensitivity possessed by public officials in states that are party to these instruments. Governments that have made international commitments have an obligation to ensure that those commitments are implemented. Human rights training is an appropriate and necessary element in fulfilling this responsibility.[70]

Notes

1. The principal documents are the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, both of which came into force in 1976, the year that Canada ratified them. The *International Convention on the Elimination of All Forms of Racial Discrimination* came into force in 1969, and was ratified by Canada the following year. Although it is outside the UN context, international human rights principles were also embodied in the *Helsinki Final Act* (1975) joined in by Canada, the United States, and most of Western and Eastern Europe.

2. See note 1, *supra*.

3. *Canada's International Relations: Response of the Government of Canada to the Report of the Special Joint Committee of the Senate and the House of Commons* (Ottawa: Supply and Services Canada, 1986), p. 72.

4. *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Supply and Services Canada, 1987), p. 51.

5. The human rights ideals are put forth, *inter alia*, in articles 1, 55, and 56 of the UN Charter and the Preamble of the Universal

Declaration, both of which have been adhered to by Canada (see authorities cited at note 8, *infra*).

6. In addition to Part I of the Constitution (the Charter), see also Part II (section 35), which recognizes and affirms aboriginal peoples' rights (also acknowledged in section 25, within the Charter). The Charter covers essentially the same ground as the *International Covenant on Civil and Political Rights*, plus home-grown formulations of language rights, aboriginal rights, multicultural rights, and equality rights. On the links between domestic and international human rights values, see also R. Manzer, "Human Rights in Domestic Politics and Policy," in *Human Rights in Canadian Foreign Policy*, ed. by R. Matthews and C. Pratt (Montreal: McGill-Queen's University Press, 1988), pp. 23-45 at 42-45; and Donald J. Fleming, "Canadian and International Human Rights Law: An Interrelationship," in this volume.

7. See: Canada, Department of External Affairs, *Statements and Speeches* 86/20, address by the Rt. Hon. Joe Clark, March 21, 1986, pp. 1-2; *Statements and Speeches* 82/23, Mark MacGuigan, "The Canadian Approach to the International Promotion and Protection of Human Rights," August 31, 1982. See, generally, ministerial statements noted in V. Berry and A. McChesney, "Human Rights and Foreign Policy-Making," in R. Matthews and C. Pratt (note 6, *supra*), pp. 59-76 at 60-62.

8. For ratifications of international instruments by Canada as well as by other countries, see J-B. Marie, "International Instruments Relating to Human Rights" (updated annually in *Human Rights Law Journal*); and UNESCO, *Chart of Ratifications of Major International Human Rights Instruments* (updated annually).

8. Ibid.; K. Kaplansky, *Canada and the International Labour Organization* (Ottawa: Labour Canada, 1981), Appendix I; K. Kaplansky, "The International Labour Organization," in Matthews and Pratt (note 6, *supra*), pp. 115-134 at 119-134.

10. See, for example: provisions cited at note 4, *supra*; *International Covenant on Economic, Social and Cultural Rights*, Preamble and articles 1(3), 2(2), 2(3), and 3; *International Covenant on Civil and Political Rights*, Preamble and articles 1(3), 2(2), 2(3), and 3.

11. In support, see *Sharing Our Future: Canadian International Development Assistance* (Hull/Ottawa: Canadian International Development Agency, 1987), p. 23.

12. *For Whose Benefit? Report of the House of Commons Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs* (Ottawa: Supply and Services Canada, 1987), p. 23; A. McChesney, "Monitoring Human Rights in the Development of Third World Countries," review article focused on B. Andreassen and A. Eide, eds., *Human Rights in Developing Countries, 1987/88: A Yearbook on Human Rights in Countries Receiving Nordic Aid*, in *Canadian Human Rights Yearbook* 4 (forthcoming).

13. A. McChesney, "Promoting the General Welfare in a Democratic Society: Balancing Human Rights and Development," *Netherlands International Law Review* 27 (1980), pp. 283-334 at 284-287, 297-301, and 330-331; G. Côté-Harper and J. Courtney, Special Rapporteurs, *International Cooperation for the Development of Human Rights and Democratic Institutions* (Ottawa/Hull: CIDA, External Affairs, 1987), p. 31.

14. Ministry of Foreign Affairs of the Kingdom of the Netherlands, *Human Rights and Foreign Policy*, memorandum presented to the Lower House of the States General of the Kingdom of the Netherlands (The Hague, 1979).

15. Correspondence from officials of the Netherlands Ministry of Foreign Affairs, 1987 and 1988.

16. Provisional Human Rights and Foreign Policy Advisory Committee, *On An Equal Footing: Foreign Affairs and Human Rights* (The Hague: Ministry of Foreign Affairs, 1985). See also commentary on this volume in "Documentary Appendix," *Human Rights Quarterly* 7 (August 1985), pp. 451-460. Note that the "Provisional" Advisory Committee has now been made permanent (letter from the ministry, 1988).

17. *On An Equal Footing*, note 16, *supra*, pp. 11-22, and Annexe, comments by the minister for foreign affairs, pp. 4-12; *Human Rights Quarterly*, note 16, *supra*, pp. 453-455.

18. *On An Equal Footing*, note 16, *supra*, pp. 11-12, and Annexe, pp. 4-8.

19. The sources for the information presented here are those cited at note 16, *supra*, updated through correspondence and conversations with officials of the Ministry of Foreign Affairs and the Netherlands Institute of Human Rights (SIM), University of Utrecht, 1987 and 1988.

20. The latter process of continuing international consultation focuses on the Helsinki Final Act of 1975.

21. The present writer served as a consultant in the joint educational undertaking. The other members of the course planning team were: through the Human Rights Centre, Magda Seydegart, Dr. Hugo Fruhling, and Philippe LeBlanc; and from External Affairs, Dan Livermore, Michael Cleary, and Mike Carroll. The description and analysis provided here is based on observations made while performing in a number of capacities: participation in planning, administration, teaching, and evaluation; and designing and compiling most of the teaching and reference materials and some of the planning and evaluation tools employed in connection with the course.

22. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and of the House of Commons on Canada's International Relations*, (Ottawa: Supply and Services Canada, 1986), p. 101.

23. *Response* (cited at note 3, *supra*), p. 23.

24. Ibid. p. 72.

25. Berry and McChesney (cited at note 7, *supra*), pp. 65-71.

26. Ibid., pp. 69, 71; and E. Regehr, "Military Sales," in Matthews and Pratt (cited at note 6, *supra*, pp. 209-220 at 214-220).

27. It is notable that the Netherlands Human Rights and Foreign Policy Advisory Committee recommended extension of human rights training, *inter alia*, to clerical staff. The minister appeared to accept the idea, but he explained that clerical staff (in 1984) were already receiving basic human rights instruction. *On An Equal Footing* (note 16, *supra*), Annexe, p. 11.

28. Each course involved approximately 25 participants. The first session, held in May 1987, was designed primarily to assist officials who were being posted overseas in the near future. The October 1987 course involved mostly staff who would remain for some time at their Canadian headquarters.

29. Although the original text of this survey was prepared with the Canadian foreign service in mind, the questions would be generally appropriate for use in human rights training in any country. The survey was designed primarily by this writer, with advice and input from Magda Seydegart, Executive Director of the Human Rights Centre at the University of Ottawa. A

slightly revised version of the original questionnaire appears as Appendix A (Needs Assessment Survey), in M. Seydegart et al., *Human Rights Training for Commonwealth Public Officials—Syllabus* (London: Commonwealth Secretariat and Ottawa: Human Rights Research and Education Centre, April 1989). Douglas Williams, of the Human Rights Centre, amended the questionnaire for publication in the *Syllabus*, removing specifically Canadian references and those particular to foreign service work. The "international" version of the survey may be published later in 1989 as part of M. Seydegart et al., *Manual on Human Rights Training for Public Officials* (London: Commonwealth Secretariat and Ottawa: Human Rights Research and Education Centre).

30. There are 21 main questions, with further corollary or optional points to be covered.

31. In an effort to ease the trainees into the large volume of material, an "advance package" was provided to each participant prior to the course, containing the core of the International Bill of Human Rights, pertinent excerpts from the UN Charter, notes summarizing international human rights and Canada's interconnections with them, a copy of the Canadian Charter of Rights and Freedoms, and lengthier commentaries covering domestic human rights and Canada's involvement in the international scene. Unfortunately, it appeared that few trainees had read the "advance" material provided prior to the commencement of the first course (though they spoke favourably of it as a technique). For the October 1987 course, the advance package was trimmed to its most essential elements, with a resulting somewhat higher readership.

32. For both the May and October courses, the participants' evaluations indicated a high approval rating for the materials distributed, as did the statements of the professional evaluators. Improvements contemplated for 1988-1989 will be mentioned *infra*.

33. The table (with explanatory notes) has since been published as *International Instruments in the Area of Human Rights to Which Canada is a Party* (Hull: Human Rights Directorate, Department of the Secretary of State for Canada, December 1987).

34. During the first two and one-half days, a number of illustrative problem scenarios were worked through by participants to increase their understanding of particular human rights laws and concepts and of how they might help to implement them, both

as policy and as part of the practical day-to-day work of a foreign service officer. The fact situations were generally based on real-life circumstances with which External Affairs and the Canadian International Development Agency (CIDA) had previously contended. The course planners took into account the fact that on a foreign posting, the demarcation between "development," "political," "trade," "diplomatic," and other assignments and roles is not always as clear as defined at Canadian headquarters.

35. The term applied by External Affairs officials to the phenomenon of loss of objectivity caused by close ties between mission staff and host governments is "localitis."

36. The doctrine of "cultural relativism" asserts that ethical values vary from place to place, and "that moral claims derive from, and are enmeshed in, a cultural contest which is itself the source of their validity." R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 37. The External Affairs/Human Rights Centre pilot courses, while stressing the need for awareness of, and sensitivity to, the cultural perceptions and realities of a given people or society, maintained the operating premise that at least some human rights concepts are universally relevant and give rise to obligations in every milieu. For discussion of "universal," "Western," and "non-Western" human rights ideals, see: Vincent, *supra*, pp. 35-37; McChesney, note 13, *supra*, pp. 287-292; J. Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6 (1984), pp. 400-419; and J. Donnelly and R. Howard, eds., *International Handbook of Human Rights* (New York: Greenwood Press, 1987), pp. 18-26.

37. See Seydegart et al., note 29, *supra*, p. 4.

38. 1. After each day's session, there were discussions among the principal instructors and planners; a wrap-up meeting took place on Day III.
    2. Throughout the instruction, a specialist in professional training at External Affairs was present; he prepared a formal evaluation.
    3. Each trainee filled out an evaluation form on Day III. These were anonymous (though some of the more enthusiastic participants chose to sign them) and were handed in to the course organizers. The results were compiled later.
    4. A formal evaluator with teaching experience in Canada and Latin America wrote a formal evaluation, based on the above-noted assessments and including his own observations. The

evaluator (and designer of the objective evaluation questionnaire) was Dr. Hugo Fruhling, a Chilean legal scholar and human rights advocate who, during 1987, held the Chair in Human Rights at the University of Ottawa.

39. Near the commencement of Day I, each participant was presented with a self-assessment questionnaire designed to test his or her own knowledge and attitudes. It was completed, placed in a sealed envelope, and retained by the participant. At the conclusion of the open meetings, each trainee was asked to fill out the same questionnaire again. By comparing the answers given before and after the two and one-half days of instruction, he or she could get some idea as to how much had been learned, whether attitudes had shifted, and whether any assumptions held at the outset were either reinforced or eroded. At no time did the instructors see the answers given; both questionnaires were kept by the participants.

    The present writer designed this questionnaire. A slightly altered version appears as Appendix B ("Personal Knowledge and Attitude Questionnaire"), in *Human Rights Training for Commonwealth Public Officials—Syllabus* (see note 29, *supra*), and is slated to be published in *Manual on Human Rights Training for Public Officials* (see note 29, *supra*).

40. External Affairs officials expressed regret at this turn of events, and stated that it was due to a sudden, large, and unexpected reduction in their overall training budget. In view of the objectively evaluated success of the pilot courses, they expressed the hope, nevertheless, to continue with some External Affairs courses during 1988-1989. As discussed *infra*, External Affairs staff have been able to take part in the courses initiated under the auspices of CIDA.

41. See, for example, Amnesty International, Canadian Section (English Speaking), "International Human Rights and Canada's Official Development Assistance Policies and Programs" (1987), p. 3; and A. McChesney, "International Development Assistance and International Human Rights" (1987), p. 4.

42. *To Benefit a Better World*, note 4, *supra*, p. 51.

43. Within Ottawa-Hull, there is regular consultation and interaction between CIDA and External Affairs; the latter's minister (the secretary of state for external affairs) is the senior one in the foreign affairs hierarchy, with supervisory power over CIDA's

political boss, the minister for external relations, (Berry and McChesney, note 7, *supra*, p. 63).

44. Information on the CIDA training program derives from conversations with most of the course planners mentioned in note 21 *supra* and note 46 *infra*, and with several of the instructors and students, as well as from viewing all but the most confidential instructional material used.

45. Such methods have been used, for example, in the training of a high proportion of CIDA staff on "Women in Development" issues since 1984.

46. The External Affairs officials involved were listed at note 21, *supra*. The principal course organizers from CIDA were: Alden Cuddihey, now chief, Training and Development, Personnel and Administration Branch; and Howard Smith, a senior policy adviser with the Policy Branch.

47. Unfortunately, the External Affairs course did not have a budget that permitted translation or interpretation. Nonetheless, many documents were made available in both official languages, and bilingual discussion was actively sought and encouraged. CIDA has been able to hold courses in either language, as numbers warrant.

48. The CIDA courses have been held in a "retreat" environment. The principal problem with training at headquarters (forecast for, and observed at, the External Affairs/Human Rights Centre courses) is the proximity of the office. At headquarters, there are pressures from mail, memos, managers, and telecommunications that are hard to ignore. Evenings are more likely to be spent catching up on lost office time than on reviewing instructional documents. When a course is held at a somewhat distant conference venue, even social times become part of the learning process. Participants interact with each other and with instructors. Discussions do not cease at the classroom door.

49. A similar approach had been taken by this writer in developing drafts of a teaching *Syllabus* completed in April 1988. See part IV, *infra*.

50. This document was prepared by Professor Stephen Toope of McGill University. He also provided a glossary of human rights terms for the course, as well as other materials.

51. In June 1989, CIDA officials and course instructors informed the writer that a thorough review of their year of experience was contemplated, to take place within the next few months.

52. It should be noted again that the current CIDA/External Affairs courses (sometimes called simply the "CIDA courses" herein) have been developed and presented in conjunction with the Canadian Human Rights Foundation and the Coopérative d'animation et de consultation.

53. The little attention paid to human rights and European security issues is understandable in a CIDA course, whose focus is on the Third World. Nonetheless, coverage of this segment in the pilot courses conducted at External Affairs was praised by the trainees. With respect to refugees and indigenous peoples, evaluation of the External Affairs/Human Rights Centre courses was also favourable, and coverage of these components was slightly increased in the second course in response to expressions of student interest.

54. On a number of occasions, Roger Clark, executive director of Amnesty International Canadian Section (English Speaking) has addressed both the English and French CIDA courses. While Mr. Clark is a knowledgeable and experienced official working with an important organization, Amnesty's work deliberately concentrates on a narrow (though central) range of human rights. It does not, for example, concern itself directly with issues of human rights and development.

55. Now that the head of the human rights unit within the Human Rights and Social Affairs Division of External Affairs is Margaret Ford, it is hoped that she will provide some of the course instruction.

56. The very brief information provided here comes from conversations and correspondence with Australian and Norwegian academics and government officials during 1988.

57. The information on UNITAR and the UN Centre comes from UN documents and from officials working in these two units, including correspondence received from both agencies during 1988.

58. *National* training courses were also planned for Togo and for Guatemala in 1988.

59. The UNESCO information is based on conversations with Asian and Australian participants, as well as on UN documents and

Economic and Social Council document E/CN.4/1988/39/Add. 1, Annex II.

60. Information on ICRC comes from its bulletin, *Dissemination*, and from its 1987 publication, *The ICRC Worldwide—1987*.

61. Information in this section is based partly on conversations and correspondence with Commonwealth officials, and on Commonwealth documents and publications, such as *Human Rights Update*.

62. The bibliography was designed and compiled by this writer and Iva Caccia, chief librarian at the Human Rights Research and Education Centre, University of Ottawa: I. Caccia and A. McChesney, *Bibliography on Human Rights Training for Commonwealth Public Officials* (Hull: CIDA, March 1988).

63. See note 29, *supra*. The first draft was completed in April 1988, and the second in April 1989. The commentary and discussion points were prepared by this writer in association with Iva Caccia, Douglas Williams, and Magda Seydegart, along with Rose D'Sa, formerly of the Human Rights Unit at the Commonwealth Secretariat.

64. The introduction was written by Magda Seydegart, with some input from colleagues mentioned in note 63, *supra*.

65. One of the chief organizers and instruction leaders was Paul LaRose-Edwards, head of the Human Rights Unit and assistant director, International Affairs Division, Commonwealth Secretariat. He was the main source of information about the Banjul Workshop.

66. The draft *Syllabus* and other instruction mechanisms apparently received strong endorsement from the African participants.

67. One teaching tool used at the workshop was a simulated country profile for a modern mythical African nation and accompanying questions related to human rights. This was prepared principally by Magda Seydegart, who also represented the Human Rights Research and Education Centre/University of Ottawa as a course leader in Banjul. It should be noted too, that Paul LaRose-Edwards (see note 65, *supra*) has been instrumental in working with the Human Rights Centre to bring the *Syllabus* and *Manual* to publication. The *Manual* is likely to contain the educational tools described at notes 29 and 39, *supra*. The attitude questionnaire (see note 39, *supra*) was used somewhat differently in Banjul than in the External Affairs/ Human Rights Centre pilot

courses. In the Gambian Workshop, participant responses were collected to aid in evaluation and in the planning of future educational efforts.

68. Communication from M.J. Gaylard, director, International Affairs Division, Commonwealth Secretariat, April 10, 1989.

69. *The Ottawa Citizen* of June 29, 1989, reports that the Department of External Affairs is changing its name to "External Affairs and International Trade."

70. In sum: "Human rights requires first and foremost that people be informed of their rights and made aware of existing procedures to seek redress for human rights violations. In order to bring about a genuine human rights culture within and between nations, the teaching of human rights must be promoted at all levels of education and professional training . . . ." 1988 Maastricht/Utrecht Statement on the Universal Declaration of Human Rights, *Netherlands Quarterly of Human Rights* 7 (1989) (continuation of SIM Newsletter), pp. 156-158 at 157.

IV.

Human Rights through Third World Eyes

Human Rights and Humanitarian Issues: A Third World View

Zia Rizvi[*]

Résumé

Cet article examine les origines occidentales du droit contemporain des droits de la personne ainsi que sa pertinence par rapport aux diverses traditions culturelles et politiques du Tiers-Monde. Parmi les facteurs qui sapent les droits de la personne dans les pays en voie de développement, on trouve : (1) les impératifs liés à la croissance économique ainsi que les politiques autoritaristes; (2) la difficulté de réconcilier traditions locales et droits occidentaux; et (3) la non-pertinence, dans les faits, des constitutions libérales implantées. L'émergence d'instruments régionaux relatifs aux droits de la personne, telle la Charte africaine, constitue un développement heureux; ces instruments pourront être utiles en tant que parties d'un consensus global sur les droits de la personne.

L'auteur considère ensuite les liens existant entre les conflits civils, les questions humanitaires et les droits de la personne. La Jordanie, l'Union Soviétique et la France ont pris des initiatives importantes dans la défense d'un nouvel ordre humanitaire international. Les états du Tiers-Monde pourront être graduellement convaincus de l'importance des droits de la personne par le biais de tels projets concrets de coopération multilatérale.

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[*] The views expressed in this paper are strictly those of the author, a staff member of the United Nations.

Introduction

What did the term "universal" mean when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly?[1] The question is more than rhetorical. In 1948, the membership of the United Nations was about one-third of what it is today. The vote on the declaration was 48 to none, with eight abstentions (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, USSR, and Yugoslavia). Over 70 per cent of humanity was either not represented at all or represented through the Western colonial powers. As for the so-called Third Worlders, their cultural values and societal norms, their "way of being" at the individual and collective levels, played a marginal role, if any, in the deliberations of the governments represented in the General Assembly. This is not to downgrade the value of the declaration or to play down the profound impact it has had during the last four decades on the lives of individuals and nations everywhere and on the evolution of international relations. Rather, the purpose of restating the well-known is to emphasize that one should not be surprised if the perceptions vary from society to society and if some countries have difficulty in fully comprehending or practising the precepts enunciated in the declaration. More importantly, it is understandable, if not justifiable, that those who did not participate in the process should sometimes tend to balk at its results.

Even if one were to disregard the history of the declaration and simply take into account the realities of contemporary global society, some fundamental questions arise: In their daily lives, do the poor in the ever-growing shanty towns relate to human rights in the same way as the rich in the high-rise buildings of major cities? Can the perception, or indeed the personal experience, of human rights of a famished peasant in a developing country be the same as that of an affluent industrialist in a developed country? Do the countries in the North and the South have the same views regarding the inter-linkages between civil and political rights and social, economic, and cultural rights?

In recent years, the concept of human rights has been much used, and abused, both as a political tool and a moral exhortation. It has served as a yardstick, or simply as a stick, more in the field of civil and political rights than of social, economic, and cultural rights, even though the latter are perceived by the Third Worlders to be more relevant to their lot.

For the vast multitudes in the Third World, enjoyment of fundamental human rights is not a matter of scholarly research or philosophical discourse: it is an aspiration amidst despondency, a ray of hope in the bleakness of a wretched existence. Like religious precepts or ethical norms, the idea of fundamental human rights and freedoms has come to occupy a place of honour in developing societies, even though the underlying principles are grasped in a vague and varied manner. For most people, human rights conjure the image of professors and politicians engaged in heated discussions, interesting but irrelevant to the realities of daily life. And yet, the conceptual framework contained in the declaration must be an integral part of the "social contract" everywhere in the world or, in the least, as Eleanor Roosevelt, who presided over the drafting of the declaration, put it: "a common standard of achievement for all peoples of all nations."[2]

Human Rights and the Third World

By and large, the problem in the Third World may not be so much with the content as with the perception of human rights and the "law" pertaining to them. The declaration contains in its very first article terms such as "dignity," "conscience," "brotherhood," which can have different meaning or practical importance for different people. In any event, they do not lend themselves easily to precise legal definitions; not any more than the term "civilized nations" used in article 38 of the Statute of the International Court of Justice.

Most countries in the Third World, even though recent independent entrants on the international scene, are societies with long histories as well as rich cultures and traditions. For the masses in these countries, notions articulated in recent decades in the West may be instinctively acceptable but not always intellectually comprehensible. In addition, the role of the state, or rather of a central government *vis-à-vis* individuals and their rights and freedoms, leads to confusion in the mind of the man in the street. The following paragraphs briefly point to some of the considerations that need to be borne in mind when examining the Third World view of human rights.

First, it should be recognized that a majority of Third World countries are governed by authoritarian or semi-authoritarian regimes. Ironically, many of them survive, and thrive, because of the support provided by some of the great Western democracies. However benevolent or enlightened an authoritarian government may be, the inherent tension between authoritarianism and fundamental human rights and freedoms cannot be denied. The populations of these countries face several dilemmas: how to accept denial of human rights and freedoms in the name of economic development or national security; how to live with the contradiction underlying the support provided by democracies to dictatorships; how to reconcile with the strategic geographical importance of their country and the consequent receipt of military aid; how to deal with a government which uses arms, intended for national defence, to repress internal opposition, etc.

Second, the intelligentsia in most Third World countries still consists, in large measure, of individuals educated or trained in the West. Their knowledge of the history and intellectual traditions of Western countries is usually far greater than of their native land; many have little sympathy for the poor of their own country; some look down upon the way of life of their compatriots; others confuse modernization with progress. National administrations in many developing countries are dominated by these "educated" people. While their commitment to human rights may not be in doubt, their ability is limited in terms of how to implement what they profess, how to harmonize local culture with the overall concept of human rights; how to modernize without harming diversity and tradition.

Third, in the same context, the problem is exacerbated by the tensions, and the lack of empathy and mutual understanding, between the urban and rural populations. The latter, poor and ill-educated, constitute the majority governed by "the few and the very few" of the cities. Even within the urban areas of the Third World, the rich have more in common with their counterparts in the North than with their own countrymen. This dichotomy, coupled with imported ideas, has its effect on the perception and practice of human rights.

Fourth, in many developing countries, the national constitutions and laws were developed by the minority intelligentsia, sometimes with the help of foreign experts. They are models of liberal thought and humanitarian feeling, but they exist in a socio-political vacuum. The relevance of constitutional provisions to the realities of the daily lives of citizens is in many cases negligible.

Fifth, in most Third World countries, the notion of "community" has always had more importance than the individual. The interests and concerns of the group prevail over those of the individual. It does not necessarily mean tension between them, but rather that the general approach is traditionally group-oriented. It goes beyond the extended family and the tribe or clan to societal norms which do not correspond to the individualistic attitudes prevalent in most of the First World. This tendency partly explains why the so-called "third generation solidarity rights" find favour with the Third Worlders. Hence the recent trend, which is increasingly gathering momentum, to promote international legislation proclaiming a series of collective rights such as the "right to development"[3] and the "right of peoples to peace."[4] In a way, this trend in the Third World complements the growing global awareness of interdependence in areas of common concern, such as peace, environment, and development.

Sixth, religion and traditions play an important role in the whole of the Third World. Their influence on the attitude of the masses towards human rights is profound and widespread. Social ethics, rather than legal stipulations, serve as the basis of certain constraints on those who govern and certain opportunities for those who are governed.

Seventh, it should be noted that in recent years, there have been a number of initiatives in the Third World to promote regional instruments more compatible with the conditions and requirements of developing societies as well as with the aspirations of people. Those instruments tend to go beyond the conventional wisdom and are more future-oriented. The African Charter of Human and Peoples' Rights, which entered into force in October 1986, is a good example of such regional attempts. Latin American and, to a lesser degree Asian, countries have also developed regional legislation on a number of specific humanitarian questions. The regional instruments can be the building blocks for a global consensus on human rights issues of common concern. In particular, they can play a pioneering role in developing principles responsive to the needs of the future global society.

Finally, the Third World played a prominent UN role in the adoption of both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. They were opened for signature in 1966 and entered into force more than a decade later.[5] These covenants represent the efforts of the international community to put principles into practice and identify ways and means of translating ideas into reality. Third World perceptions on human rights are best understood in this practical context.

Humanitarian Issues and the Third World

It is the irony of fate that humanitarian problems abound most in the societies which can least afford to have them. Many Third World countries are caught in this vicious circle. Hence their desire to address specific humanitarian problems whose resolution can improve their lot. One good action is better than a thousand words and declarations, they say. The importance of implementability is generally recognized in both the South and the North. The UN General Assembly, at its 41st Session in 1986 (G.A. Resolution 41/120), noted that new international human rights instruments should "be sufficiently precise to give rise to identifiable and practicable rights and obligations [and] provide, where appropriate, realistic and effective implementing machinery, including reporting systems."

In recent years, there has been an increasing awareness of the "human factor" in national and international policy making; and of the need to make man and his welfare the ultimate criterion of principles and practices. In the North, this is partly due to the fact that the technological advances of the post-Second World War period are now beginning to backfire in human terms.

Clearly, technology and scientific progress or industrial advancement are not the only answers to humanitarian problems. Man's knowledge of matter may be very advanced, but his knowledge of himself has made very little progress over the last thousand years. "Our future depends not merely on finding technical solutions to the problems we face, but also on reaching a consensus about the ethical basis for our response."[6]

The human factor has, in any event, been omnipresent in the South's traditions and culture. Thus a certain convergence of interests and perceptions between the North and the South is gradually emerging; it can be helpful in the promotion of a global consensus for addressing more effectively the ever-growing humanitarian problems ranging from structural poverty and famine to a variety of natural and man-made disasters.

Efforts relating to humanitarian issues have been viewed by some human rights advocates as competitive moves to divert attention from the drive for fundamental rights and freedoms. Nothing could be further from the truth. Identifying appropriate solutions to humanitarian problems and increasing awareness of emerging humanitarian issues are efforts that represent the practical side of human rights. While preserving the existing international instruments and structures, it would be worthwhile to identify common values that bind humanity together—to reinvigorate those societal norms and impulses which have helped humankind survive and thrive.

Before becoming a victim of his own scientific ingenuity, it is necessary for man to solve, if not prevent, newly emerging problems as well as to address those aspects of existing problems which have been hitherto neglected. The Third World spearheaded one such approach in 1981.

A New International Humanitarian Order (NIHO)

At least in semantic terms, the proposal made by Jordan at the thirty-sixth session of the UN General Assembly to promote a New International Humanitarian Order was analogous to earlier attempts made in the fields of economics and information. But the analogy stopped there. The New International Economic Order debated at the United Nations, and the New Information Order promoted in UNESCO, resulted in the polarization of North and South. The purpose of NIHO was to promote a global consensus by building on existing instruments and mechanisms. It proposed to accelerate on-going efforts by emphasizing issues and aspects that had been relatively neglected by the international community. In introducing the idea at the Plenary Session of the General Assembly, Crown Prince Hassan of Jordan stated: "Before dealing with economics and politics, let man learn to be more human. I believe that just as the 1948 Declaration of Human Rights became the springboard for a number of international covenants and legal principles, this comprehensive International Humanitarian Order may offer a new impetus for a Code of Conduct in human and international relations of which we are so desperately in need."[7]

The evolution of the proposal within the United Nations is, in itself, an interesting example of multilateral diplomacy. How an idea grows through different stages and gradually gathers momentum in the international community, is a process worth analyzing.

The idea, presented initially in very succinct form in a speech devoted largely to the situation in the Middle East, was elaborated later in a communication addressed by the permanent representative of Jordan to the UN secretary general requesting the addition of a new item to the agenda of the General Assembly.[8] The letter of the permanent representative and its annex were circulated as assembly documents, and the new item was referred to the Third Committee. This item, which was to serve as the basis of discussion, was of a general nature, vast in scope but intentionally ambiguous. Had NIHO been given very specific content at the outset, it would probably have led to a heated debate, politicization, polarization, and an early demise of the concept—particularly since most of the developed countries, wary of such initiatives, had received it lukewarmly. When Jordan introduced a supportive resolution, its brevity, coupled with the curiosity of the North and the interest of the South, saved it. There was hardly any substantive debate. The only question asked (in the lobby) was whether the draft resolution had any budgetary implications. It had none; it was adopted without a vote.[9]

The General Assembly noted the proposal with interest and recognized, *inter alia*: "the importance of further improving a comprehensive international framework which takes fully into account existing instruments relating to humanitarian questions as well as the need for addressing those aspects which are not yet adequately covered." The assembly also bore in mind the need for institutional arrangements "to be further strengthened to respond effectively in situations requiring humanitarian action." It requested the secretary general to seek the views of governments and to report at the thirty-seventh session of the assembly.

The following year, the secretary general, in a brief report (Doc. A/37/145), informed the assembly that: "all Governments that provided their views on the proposal for the promotion of a New International Humanitarian Order supported the intentions underlying the proposal and the need for developing greater international awareness of humanitarian issues and more effective means of dealing with such issues." Meanwhile, consultations with governments had made it clear that the proposal needed to be further analyzed by individuals who could deliberate independently of the constraints of inter-governmental debates, so that the issues would not be prematurely politicized and would benefit from expert advice before governments reviewed it. This conclusion was based on a suggestion that had already been made in the original submission of the Jordanian delegation.[10]

The assembly adopted a further resolution[11] which noted (in paragraph 5) "the proposal for the establishment, outside the framework of the United Nations, of an Independent Commission on International Humanitarian Issues composed of leading personalities in the humanitarian field or having wide experience of Government or world affairs." The Independent Commission was established the following year and held its first plenary session in New York in November 1983. In a further resolution[12] adopted soon after, the assembly noted its establishment and recognized "that the work of the Independent Commission could be useful for further study of the proposal."

Following a cautious step-by-step approach, the General Assembly has proceeded to adopt a series of resolutions under the agenda item relating to NIHO, corresponding more or less to the reports of the secretary general of which five have hitherto been made available to member states.[13] As of December 1988, the assembly had adopted six more resolutions.[14]

The practical value of such resolutions is questioned in some quarters. However, as an expression of the wishes of the international community, their importance should not be underestimated. All NIHO resolutions were adopted by the General Assembly without a vote; and an increasing number of member states from all continents and regions have been co-sponsoring them. Also, NIHO initiatives taken by the Soviet Union and France deserve special mention.

The Soviet Initiative

In 1987, during the assembly's forty-second session, the Soviet Union presented a draft resolution entitled "International Co-operation in the Humanitarian Field." The draft, later adopted without a vote (Res. 42/121 of 7 December 1987), was inspired by language in the UN Charter (article 1, paragraph 3) enumerating as one of the purposes of the United Nations: "To achieve international co-operation in solving international problems of an economic, social, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." The resolution recognized "the positive role played by the Independent Commission," and, in its operative paragraph 4, considered that "international co-operation in the humanitarian field will facilitate better understanding, mutual respect, confidence and tolerance among States and peoples, thus contributing to a more just and non-violent world."

At the forty-third session of the General Assembly, the Soviet delegation pursued the initial idea with greater vigour and tried to overcome the reticence shown by a number of countries, particularly those of the Western Group. The initial draft went through a number of informal amendments but was finally adopted without a vote.[15] The resolution was bolder than the previous one. It noted "with satisfaction the report of the Independent Commission on International Humanitarian Issues and the efforts of the Independent Bureau for Humanitarian Issues to promote public awareness of humanitarian problems and to identify alternative approaches for resolving humanitarian problems." This resolution, in its operative paragraph 7:

> Requests the Secretary-General to continue his contacts with Governments, agencies and programmes of the United Nations system and governmental organizations concerned, as well as with the Independent Bureau for Humanitarian Issues and, taking into account information received, to submit to the General Assembly at its 45th Session a report on possible ways and means of strengthening international co-operation in the humanitarian field.

The Soviet initiative should be viewed in the light of its "Perestroika" policies. They follow a holistic approach which goes beyond national concerns, and in which humanitarianism has a key role to play. Likewise, although the thrust of recent Soviet action has been in the areas of resolution of regional conflicts, peace, and disarmament as well as super-power relations, the implications for other fields should not be neglected. As President Mikhail Gorbachev stated in his 1989 speech to the General Assembly: "Nations and the public at large ardently wish to see improvements. They want to learn to co-operate. This trend is sometimes remarkably strong. What's more important, such sentiments are being transformed into policy."[16]

A follow-up to the NIHO developments in the assembly was the publication and diffusion from Moscow of all the reports of the Independent Commission. Then, too, a Moscow Round-Table organized jointly by the Commission and the Soviets yielded a number of interesting ideas, including the possibility of developing "confidence-building measures" (CBMs) in the humanitarian field along the same lines as in the Helsinki process relating to security and cooperation in Europe.

The French Initiative

A very specific aspect of NIHO has been of great concern to the French Government for some years, i.e., "humanitarian assistance to victims of national disasters and similar emergency situations." At the forty-third session of the General Assembly, France put forward the "right to humanitarian assistance." This basic idea has naturally met with resistance from those alleging the sovereign prerogatives of the state *vis-à-vis* outside interference in domestic affairs. However, an important beginning was made through the tenacious efforts of the French delegation to have a resolution adopted despite reservations and a plethora of informal amendments. The resolution (43/131 of December 8, 1988) was, in fact, adopted without a vote and marked the beginning of an important process which is bound to follow its course in view of the ever-increasing number of natural and man-made disasters around the world.

The French move also has a wider significance. It opened the way for this UN agenda item to serve as the umbrella for new ideas and initiatives in the humanitarian field. Prospects are particularly bright in view of the many neglected issues and of the wide-ranging recommendations made by the Independent Commission.[17]

The Independent Commission on International Humanitarian Issues

The establishment of this commission had one innovative feature: it was not a body created by the United Nations and was therefore independent and free of inter-governmental constraints, and yet, through a series of General Assembly resolutions, an institutional link was created which, as NIHO develops, may well stand the test of time. The commission consisted of 29 eminent personalities from as many countries. It is interesting to note that this was the first commission initiated by Third Worlders and financed mainly by them.[18] It was also the only one where members from all five big powers participated and where all regions, cultures, and schools of thought were represented. This careful structuring was intended to ensure that the consensus recommendations of the commission would have a good chance of being generally acceptable around the world.

The commission chose, at the outset, to have a limited life-span and mandate, and not to content itself with the simple preparation of a report. It decided to study specific humanitarian problems, make concrete recommendations, and then follow up on implementation, individually and collectively. While the diplomatic work of persuading governments and international bodies was done discreetly, the deliberations of the commission led to the publication of a series of sectoral reports on humanitarian issues.[19] These reports have been discussed not only by governments, but also by governmental and non-governmental international organizations.

Follow-up Mechanisms

At the end of its life-span and upon completion of its final report, the commission established an Independent Bureau to carry its work forward. The General Assembly took note of this and, *inter alia*, requested the secretary general to be in contact with the bureau in the context of NIHO. The bureau, which inherited the secretariat of the commission in Geneva, is required not only to complete the publication of sectoral reports and to perform the tasks of dissemination and advocacy, but also to follow up on certain recommendations of the commission. These include encouraging the establishment or strengthening of humanitarian mechanisms within governmental structures, as well as promoting the creation of national independent commissions to concentrate on specific humanitarian issues of national or regional interest.[20]

Conclusions

A practical approach to human rights, supported by Third Worlders, consists of addressing specific humanitarian issues in an attempt to produce tangible results for improving the lot of the deprived multitudes. A New International Humanitarian Order, foreshadowed in the Universal Declaration of Human Rights, must be further developed to meet contemporary humanitarian challenges and, above all, to prepare for the future. Recent efforts within the United Nations, still in the embryonic stages in global terms, need to be strengthened.

The role that people and non-governmental organizations can play in this regard is of fundamental importance. Governments, of course, remain vital. However, people's movements and people-to-people relations are slowly but surely becoming the order of the day. These must be encouraged not only in order to ensure effective implementation of human rights instruments, but also, in a broader context, to make the "human factor" a cornerstone of national and international policy making.

Amidst political rivalries, economic disparities, and armed conflicts, it is in the humanitarian field that the process of global consensus-building has the best chance of leading humankind to a more acceptable future.

Notes

1. G.A. Resolution 217A (III), G.A.O.R. 3rd Session, part I, p. 71.
2. U.S. Department of State Bulletin 751 (1948).
3. G.A. Resolution 41/128, Annex 41 U.N.G.A.O.R. Supp. No. 53, p. 186.
4. G.A. Resolution 41/10, 41 U.N.G.A.O.R. Supp. No. 53, pp. 21.
5. G.A. Resolution 2200/21, U.N.G.A.O.R. Supp. No. 16. pp. 49-52.
6. Independent Commission on International Humanitarian Issues, *Winning the Human Race* (London, 1988), p. 26.
7. Statement issued by the Permanent Mission of Jordan, New York, 28 September 1981, p. 9; also Doc. A/36/PV.15, p. 57.
8. Doc. A/36/245 dated 30 October 1981.
9. G.A. Resolution 36/136 of 14 December 1981.
10. Doc. A/36/245, annex, paragraph 10.
11. G.A. Resolution 37/201 of 18 December 1982.
12. G.A. Resolution 38/691 of 16 December 1983.
13. A/37/145; A/38/950; A/40/348 and Add. 1 & 2; A/41/472; and A/43/734.
14. G.A. Resolution 40/126 of 13 December 1985; 42/120 and 42/121 of 7 December 1987; and 43/129, 43/130, and 43/131 of 8 December 1988.
15. G.A. Resolution 43/130 of 8 December 1988, introduced by the USSR and co-sponsored by Bulgaria, the German Democratic Republic, Iraq, Jordan, Mongolia, Morocco, and Vietnam.
16. Text issued by the USSR Permanent Mission in New York. See also Vadim Zagladin, *To Restructure and Humanize International Relations* (Moscow, 1989), pp. 156-57.
17. France was among the first countries to take into account the recommendations of the Independent Commission, one of the most important of which was the establishment of a ministry or department dealing exclusively with humanitarian issues. The French delegate stated, *inter alia*: "This is precisely what the French authorities have done by creating, in July 1988, the Office

of Secretary of State for Humanitarian Action, attached to the Prime Minister." Statement of Ambassador Pierre-Louis Blanc on 9 November 1988, in the Third Committee, official text issued by the Permanent Mission of France.

18. The commission was co-chaired by Sadruddin Aga Khan and Hassan Bin Talal. The members from the five big powers were: Igor Blishchenko (USSR), Robert McNamara (USA), David Owen (UK), Ru Xin (China), and Simone Veil (France).

19. *Famine: A Man-made Disaster* (London, New York, 1985); *The Encroaching Desert: The Consequences of Human Failure* (London, New Jersey, 1986); *The Vanishing Forest: The Human Consequences of Deforestation* (London, New Jersey, 1986); *Street Children: A Growing Urban Tragedy* (London, 1986); *Modern Wars: The Humanitarian Challenge* (London, New Jersey, 1986); *Refugees: Dynamics of Displacement* (London, New Jersey, 1986); *Indigenous Peoples: A Global Quest for Justice* (London, New Jersey, 1987). These books have been published in most major languages—a total of 50 editions in different regions of the world.

20. Report of the Independent Commission, *supra*, note 6, pp. 193-95.

Human Rights in Latin America: A Venezuelan View

Carlos Ayala Corao

Résumé

L'auteur examine la place des droits de la personne dans l'Amérique latine d'aujourd'hui. Il commence en soulignant les affinités historiques et culturelles de l'Amérique latine et de l'Europe de l'ouest et il note combien les notions de démocratie et de droits dans cette région étaient tissés à même le mouvement constitutionnaliste du 19ième siècle. La naissance des états en Amérique latine a été accompagnée d'idées républicaines, y inclus la notion de gouvernement élu par le peuple. Cependant, l'auteur énonce aussi que le processus d'indépendance et les débuts historiques de pays comme le Mexique, ont fourni un terrain fertile à une implication normative visant à garantir des droits économiques et sociaux. Au Vénézuela, un tel engagement est inscrit à la constitution.

Ensuite, l'auteur explore certains thèmes plus larges qui se heurtent à la question du sort réservé actuellement aux droits de la personne en Amérique latine. Ces thèmes comprennent : les liens entre la dette extérieure, les crises économique internes et la fourniture des besoins humains de base; le droit au développement; et le système inter-américain de protection des droits de la personne.

I. Introduction

In the 40 years that have passed since the United Nations General Assembly adopted the Universal Declaration of Human Rights, a number of political, economic, and social changes have taken place in the human rights field. There has been an internationalization of the human rights issue in a process that still has not ended.[1] This, in turn, has produced a perception of indivisibility: when economic, social, and cultural rights are not enforced, civil and political rights are reduced to mere formal categories, and vice versa. Already implicit in the Charter of the United Nations, the concept of indivisibility was extended to the Universal Declaration, and was reaffirmed in 1966 in the two UN covenants on human rights (in force since 1976), and in the Proclamation of Tehran of 1968, as well as in the 1977 General Assembly resolution on the criteria and means to improve the implementation of human rights. This, of course, does not imply that there still do not exist important goals to be achieved.

It is neither appropriate nor easy to assess human rights progress only on the basis of a classification by groups of countries. The term "Third World" is both complex and imprecise. Thus Latin America, from the economic point of view, belongs with the developing countries. Nevertheless, in the human rights area, a Western ideology has arisen,[2] in terms of which "man possesses rights and freedoms that are inherent in his nature, particular to his quality as a person, prior to the State and to all political organizations, which are inalienable and cannot be waived."[3] These rights, then, are an attribute of the human being and do not derive from citizenship as such. The Western conception of human rights embraces representative and participatory democracy, wherever it may be.

II. Human Rights, Democracy, the Welfare State, and the Rule of Law

After all, man is freedom, and history is the feat of freedom; freedom is also the feat of history.[4] And freedom is absolutely tied to democracy.[5]

The political evolution of mankind in the past two centuries has brought the rise of national states inspired by the ideals of freedom and equality. And since the end of the Second World War, we have seen the birth and development of world and regional organizations dedicated to achieving peace and international social justice.

In the case of Latin America, the organization of independent states in the post-colonial period was influenced by the liberal philosophy of the end of the eighteenth century and beginning of the nineteenth. Among the historical phenomena that have had the greatest impact were:

1. The Declaration of Independence of the 13 colonies making up the United States of America in 1776—in particular with respect to the right to self-government, happiness, and individual freedom.
2. The U.S. Constitution of 1787—in particular with regard to a written constitution, federalism, the separation of powers, constitutional supremacy, and the rule of law. Later, the Bill of Rights, with the basic rights and freedoms of citizens, was included in the U.S. Constitution, and was to be incorporated and developed in Latin American constitutions.
3. The French Revolution, the Declaration of the Rights of Man and of Citizens of 1789, and the Constitution of 1791—in particular with respect to liberal ideas and their influence in state-church relations, egalitarianism, and the constitutional recognition of individual freedoms (right to life, private property, and personal security).

Under these influences, but with their own special features, Latin American states were born at the beginning of the nineteenth century. These characteristics include ethnic mixture (Spanish, Native, and African), cultural and religious (Catholic) values and traditions, economic dependency, and monoproductive economies. Moreover, the leaders of the independence movement, such as Simón Bolívar and General San Martín, put a particular stamp on the process.[6]

Venezuela was the first country in Latin America to formally proclaim its independence, on April 19, 1810. The congress, elected by the people on July 5, 1811, approved a declaration of independence for the "American Confederation of Venezuela."

Congress also approved a *Declaration of the Rights of the People* on August 1, 1811, becoming the first Latin American country, and one of the first countries in the Western world, to take such action. Finally, congress adopted a constitution on December 21, 1811 (*Federal Constitution for the States of Venezuela*). This was the first written constitution in Latin America, the second in the Western Hemisphere, and the third in the world.[7]

The constitutionalization of the rights of man occurred in Latin America during the nineteenth century. This was more formal than substantive. Nevertheless, it showed the concern of the young nations to build the *raison d'être* of the state on the recognition and protection of individuals—locating it in the norm of norms, the constitution. Definite limits were placed on the actions of public branches against private persons.

The birth of Latin American nations was accompanied by republican ideas on the form of government. In particular, the concept of government by popular election evolved during the nineteenth century. On the other hand, political and economic instability hindered true democratic development. And by the end of the century, it had become evident that individualistic liberal democracy was unable to bring full realization of social and economic goals.

This parallelled developments in Europe. In that context, three alternative approaches can be formulated. The first is liberal democracy; the second, Marxist revolutionary change; and the third, the transformation of formal political democracy into real and comprehensive democracy in terms of political, social, and economic content.

The third approach is pivotal. It involves the "rights to credit" of the individual in society and the state:[8]

1. *social rights:* labour, family, health, housing, etc.
2. *economic rights:* property (allowing for the social function of private property), economic freedom, just distribution of wealth, etc.
3. *political rights:* universal and secret ballot, political participation, etc.

The first two categories of rights are called "rights and social aspirations" by Carl Schmitt.[9] They are equivalent to Forsthoff's concept of "existential procuration" (i.e., equal opportunities).[10] In effect, the state is obligated to seek the social and economic welfare of its citizens, to guarantee them the conditions for individual and collective development.

The third category of rights are what Schmitt called "political rights of a democratic nature"[11]—citizens' rights to have their own representative and participatory government, subject to popular control.

Latin American socio-economic democracy had its beginnings in the Mexican Revolution of 1910. But with the persistence of one-party rule (the Partido Revolucionario Institucional—PRI) this did not develop into pluralistic democracy.

Nonetheless, despite the dictatorships, revolutions and democratic change took place in the majority of Latin American countries—tending towards welfare states with the rule of law, and guarantees for social, economic, and political rights.

In the Venezuelan case, these changes began after the death of the dictator "El Benemérito", Juan Vicente Gómez (December 17, 1935). They involved both the constitution and political mechanisms under the government of General Lopez Contreras (1936-1941).

This process, interrupted during the 1950s, culminated in a return to democracy in 1958. Approval of the current constitution (January 23, 1961) was the product of consensus among labour and the political, religious, and economic elites. Social, economic, and political rights are expressly recognized. Moreover, all the implicit rights that are not expressly enumerated in the text but that are "inherent to the human being," are also recognized. If the first generation of rights were the individual rights inspired by the French Revolution, and the second generation were social, economic, and cultural rights, the "third generation of rights"[12] are those which have not yet been clearly established. They are a combination of individual and collective rights—the right to peace, the right to development, the right to a common patrimony of mankind, the right to a healthy and ecologically balanced environment, etc.

But constitutional rights are not realized by their mere declaration. A variety of mechanisms is necessary to ensure protection against human rights violations by the state. Among such mechanisms in Venezuela—as in many other Latin American countries—are the following:

1. *Extrajudicial*:

   Congress of the Republic, through its powers of legislation and control (investigation) (art. 139, National Constitution—NC).

   President of the Republic and administration, through the execution of government policies that contribute to the realization of citizens' rights (art. 190, ord. 12, NC). Likewise, through recourse to appeal (art. 67, NC; and the Organic Law of Administrative Procedures).

   Public Ministry, the special independent government agency responsible for monitoring respect for constitutional rights and guarantees (art. 220, ord. 1, NC). This agency is equivalent to the Swedish "Ombudsman" and to other European officials like the Spanish "People's Defender." The Public Ministry in Venezuela also has powers to bring suit in the courts.

2. *Judicial*:

   Supreme Court of Justice and lower courts of the republic, through the power to determine constitutionality (art. 20, Code of Civil Procedure); and in response to citizens' allegations of government violations of the constitution (art. 215, ords. 3, 4, 6 and 7, NC).

   Amparo: Special action to obtain immediate protection for violations of constitutional rights by the state, private individuals, or associations (art. 49, NC; and the Organic Law on Protection of Rights and Constitutional Guarantees).

III. Human Rights and International Politics

The question of human rights traditionally belonged to the domestic jurisdiction of national states. But with the Charter of the United Nations, and in reaction to the horrors of the Second World War, this issue became an essential new chapter of international law and international politics. All states—to a lesser or greater degree, positively or negatively, expressly or tacitly—use human rights as a basic element of foreign policy.[13]

However, this has led to the international politicization of human rights and their discriminatory use by both world blocs. Thus in the United States, differences in position are evident as between the Carter and Reagan administrations; the former was characterized by constant invocation of the human rights theme, and the latter by its subordination to other foreign policy considerations, and by a double standard in reaction to violations in Chile and Nicaragua. Likewise, the Soviet Union gives special attention to the human rights situation in Chile and El Salvador, but ignores other equally serious cases such as Cuba and Nicaragua. But general interest in the topic has sensitized world public opinion, non-governmental organizations (e.g. Amnesty International), and national states toward human rights violations.

Progress towards real international respect for human rights will continue to be slow and difficult. But there *will* be progress.

IV. The Latin American Crisis

Latin America can be considered a region economically dependent on the Western industrialized capitalist bloc, with two small exceptions (Cuba and Nicaragua) that are dependent on the Soviet bloc. Such dependency generates underdevelopment, with particular characteristics in each country. It also promotes tensions that conspire against peace, including:[14] 1) domestic tensions between classes and internal oppression, 2) international tensions and neocolonialism, and 3) tensions among Latin American countries.

The economic situation of Latin America broadly reflects a lack of respect for human rights within the region and by other states in the international community. Since 1970, some 40 per cent of Latin America's population has been unable to meet its basic needs. While the incidence of poverty is very unequal among countries, between 30 and 40 per cent of the total population is estimated to be nutritionally deficient.

From 1974 to 1983, the foreign debt of Latin America grew four times, and interest increased by twice this proportion. In 1981, the long-term and medium-term debt exceeded $500 billion. Between

1980 and 1983, Latin American exports fell by 20 per cent. Large capital outflows to developed countries have greatly aggravated the problem.[15] And the burden of foreign debt has not eased in spite of huge repayments; on the contrary, the debt has risen.[16]

Of the 25 countries covered by the Inter-American Development Bank, only three show recent positive growth rates in per capita national product (Brazil 1.6 per cent, Colombia 8.3 per cent; and Panama 3.2 per cent). Negative rates vary between 6.5 per cent and 18 per cent, with exceptions like Bolivia at 27 per cent, Guatemala at 20 per cent, and Venezuela at 19 per cent.[17]

Economic growth is indispensable, but not sufficient. Public policies to overcome the crisis must centre on human rights with economic content.[18] Only in this way will a higher level of both quantitative and qualitative development be achieved.

V. The Right to Development as a Right of Developing Countries and the Human Person

It follows that development should be an obligation of states and a right of the human being.

The idea of a right to development has been gaining ground.[19] Indeed, it is part of a new field of economic international law, within the ambit of the United Nations.

The right to development is at the same time an individual and collective right. It is a consequence of recognizing economic, social, and cultural rights—in sum, the right to life at its fullest. All rights and fundamental freedoms are indivisible and interdependent.

The *holders* of this right are the following: 1) as a collective right in international law, all states but particularly the developing countries, and in internal law the public entities whose development must be encouraged (provinces, states, and municipalities), 2) as an individual right, people, without discrimination.

The *passive subjects* of this right are the following: 1) as a collective right, again the international community, and each state with its entities, 2) as an individual right, again, all people, with claims implicit in the obligations of others.

The *object* of this right is, of course, development. Collective development affects individual development, and vice versa. But individual development is a necessary condition for true community development.

Man is the object of, and justification for, development. The right to development, therefore, implies the right to the free development of the human personality (art. 43, NC). This is justice. And its roots are economic, social, cultural, and political.[20]

The right to development as an individual right derives from various international documents, particularly the Universal Declaration of Human Rights and the two confirming UN covenants. References are also to be found in the American Convention on Human Rights (art. 26), and in the Charter of the Organization of American States (OAS) as amended by the Protocol of Buenos Aires in chapters VIII and IX. Finally, there came the Declaration on the Right to Development, adopted by the UN General Assembly on December 4, 1986.[21]

This declaration stipulates that the right to development is an inalienable human right by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.[22] After all, the individual is the central subject of development and should be the active participant in, and beneficiary of, the right to development.[23]

The responsibility for development is one of all human beings individually and collectively considered, but at the same time states have both the right and the duty to formulate appropriate national development policies.[24] For this reason, states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.[25]

In sum, the right to development as a human right is the synthesis of all the rights of man in an indivisible and interdependent system.[26] If these rights are not respected, development is impossible.

VI. The Inter-American System

The evolution of human rights in Latin America reflects a curious ambivalence between Western theory and the reality of a continent in process of development with enormous social, economic, and political problems.

In Latin America, there are important international legal instruments similar to those that evolved in Western Europe. The former include the 1948 American Declaration on the Rights and Obligations of Man, the 1948 Inter-American Bill of Social Guarantees, the Charter of Bogotá of 1948, the Inter-American Human Rights Commission created in 1959, the 1967 Protocol of Buenos Aires (reforming the charter), and the San José Convention of 1978.

Indeed this adds up to an extensive framework for the protection of human rights. On the one hand, there is the general system applicable to all the members of the OAS; it comprises the American declaration, the charter and the Inter-American Human Rights Commission. On the other hand, there is a more complete system based on the American Convention on Human Rights; it applies only to the parties to that treaty, and its organs of protection are both the Inter-American Human Rights Commission and the Inter-American Court of Human Rights. The court has compulsory jurisdiction over all states that are parties to the convention. The court also serves as a consultative organ for all members of the OAS.

The Inter-American Human Rights Commission has been the key organ of the inter-American system. Individual victims of human rights violations can appear before the commission. The Inter-American Court of Human Rights, the newest organ, has been hampered by conceptual and practical difficulties, but it has played an important consultative role in the interpretation of the international law of human rights.

Nonetheless, the inter-American system has been oriented more towards civil and political rights than towards economic, social, and cultural rights. And declared rights have differed from the reality of underdevelopment. Both gaps remain very wide.

VII. Venezuela: Foreign Policy and Human Rights

The Venezuelan Constitution provides for a welfare state under the rule of law. As already noted, this has meant recognition not only of political rights, but also of social and economic rights; and recognition of implicit "rights inherent to the human being." There are, as well, substantial mechanisms for the protection of these rights.

But the Venezuelan reality has demonstrated the inability of such mechanisms, without more, to achieve the full exercise of human rights. As Professor Burdeau has stated, freedom is indissolubly linked to democracy.[27] What is needed is true comprehensive political, economic, and social democracy.[28] Governmental power can be organized under that system, to bring and sustain the freedoms which the people do not yet enjoy.[29]

With respect to foreign policy, the preamble of the Venezuelan Constitution establishes the obligation to cooperate with other nations, and especially with the sister republics of the continent, on the basis of mutual respect for sovereignty and self-determination, *the universal guarantee of individual and social rights of the human being*, and the repudiation of war, conquest, and economic predominance as instruments of international politics. In this context, Venezuela has developed several important cooperation programs, notably with Caribbean and Central American countries (e.g., the "San José Agreement" for payment of oil bills).

The preamble also establishes the democratic order as the sole and unrenounceable means to guarantee the rights and dignity of citizens. And it calls for their peaceful extension to all peoples on earth.

Venezuelan foreign policy has, in fact, contributed to the institutionalization of democratic freedoms on the continent, while respecting the principles of non-intervention and self-determination. Democratic nations and democratic movements have found stimulus and encouragement there.[30] By the same token, Venezuela has opposed authoritarian and totalitarian forces operating in the region, with a view to preserving pluralistic democracy based on universal suffrage and citizens' participation. Venezuelan foreign policy has chosen peace over violence; and it has striven to advance the continent towards full democratic protection of human rights.

Notes

1. Hector Gross Espiell, *Estudios sobre Derechos Humanos* (Caracas: 1985), pp. 292 ff.

2. Ibid., pp. 304 ff.

3. Gregorio Peces Barba, *Derechos Fundamentales* (Madrid: 1973), pp. 53-58.

4. Claudio Sanchez Albornoz, *Historia y Libertad, con un Pie en el Estribo* (Madrid: 1974), p. 258.

5. Georges Burdeau, *La Democracia* (Barcelona: 1960), p. 23.

6. See Simón Bolívar, "Manifiesto de Cartagena. Carta de Jamaica. Discurso de Angostura," in *Escritos Fundamentales* (Caracas: 1982).

7. Allan Brewer Carías, *Las Constituciónes de Venezuela,* Estudio Preliminar (Caracas: 1985), pp. 18 ff.

8. Jean Riveró, *Libertés publiques* (Paris: 1971).

9. Carl Schmitt, *Teoría de la Constitución* (México: 1952).

10. Ernest Forsthoff, *Sociedad Industrial y Administración Pública* (Madrid: 1967).

11. Schmitt, *Teoría de la Constitución.*

12. Hector Gross Espiell, "Los Problemas Actuales de los Derechos Humanos," in *Derechos Humanos* (Barquisimeto: 1986).

13. Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: 1979).

14. S.J. Luis M. Olazo, "Justicia-Derechos Humanos-Paz" (Typescript) (Caracas: UCAB, 1986), pp. 5 ff.

15. Speech given by Barber Conable, president of the World Bank, IMF-World Bank Joint Assembly, September 1987.

16. Mon. Oscar Rodríguez, "Algunas Consideraciónes éticas sobre la Deuda Externa en América Latina," *Boletín Celam*, no. 217 (January 1988).

17. Ibid.

18. Felipe Foxley and Jorge Rodríguez, *Los Derechos Económicos-Sociales del Hombre* (Santiago: 1986), pp. 51 ff.

19. Gross, *Los Problemas*, p. 28.

20. Ibid., pp. 168-185.

21. General Assembly Resolution 41/128, 97th Meeting, December 4, 1986.

22. Ibid., article 1.

23. Ibid., article 2.1.

24. Ibid., articles 2.2 and 2.3.

25. Ibid., article 3.1.

26. Ibid., article 6.2.

27. Burdeau, *La Democracia*, p. 28.

28. Alan R. Brewer Carías, *Garantías Constitucionales de los Derechos del Hombre* (Caracas: 1976).

29. Burdeau, *La Democracia*, p. 28.

30. José Alberto Zambrano (Venezuelan Minister of Foreign Affairs, 1979-1984), *Conferencia en el Instituto de Altos Estudios de la Defensa Nacional* (Caracas: 1982), pp. 13 ff.

Human Rights and Economic Development: The Case of Africa

George B.N. Ayittey

Résumé

Cet article porte sur les violations notoires des droits de la personne en Afrique ainsi que sur la terrible oppression faite à ses peuples. Jusqu'à maintenant, discuter des droits de la personne en Afrique a été un sujet tabou chez les intellectuels occidentaux. En bonne partie, cette attitude découle d'un sentiment de culpabilité collective, suite aux injustices que la domination coloniale occidentale a engendrées en Afrique. Mais la question de l'oppression des Africains, par leurs propres dirigeants cette fois, ne peut plus être évacuée d'un débat intellectuel sérieux puisque cela a entrainé des conséquence nuisibles au plan de l'économie et du développement et, corollairement, au plan des politiques d'aide extérieure.

L'orthodoxie qui prévaut actuellement en matière de développement économique, présente deux lacunes fondamentales. D'abord, il lui manque la connaissance opérationnelle du contexte socio-économique dans lequel le développement se produit. Une loi de la nature dit qu'une graine ne germera pas si elle est plantée dans un environnement topographique impropre. De même, un nombre incalculable de semences, ou de projets, échouent en Afrique parce qu'ils ne s'adaptent pas à la culture socio-économique de l'endroit. Et cette description vaut aussi pour toute la gamme des institutions indigènes, économiques, politiques et sociales des paysans africains, qui constituent la majorité dans presque *toutes* les nations d'Afrique. L'étude et la

connaissance approfondie de ces institutions est vitale pour que la planification du développement de l'Afrique soit fructueuse.

La deuxième lacune de ce type d'analyse du développement économique est le fait qu'elle assume l'environnement socio-économique, quel qu'il soit, comme une donnée constante. Cet article prétend plutôt que, loin d'être constant, le contexte socio-économique qui prévaut presque partout en Afrique, s'est détérioré. En effet, dans plusieurs pays on peut le caractériser par la répression brutale du peuple africain et la corruption éhontée, le détournement délibéré des fonds publics et le pillage effréné du Trésor d'état qu'on dépose dans des banques suisses.

Les effets de ces malversations sur le développement économique ne peuvent plus être ignorés. Par exemple, il y a plus de 8 millions de réfugiés africains, ce qui représente plus que la moitié du total mondial des réfugiés. Ce sont des paysans qui ont fui leurs villages afin d'échapper à un état généralisé de terreur et de violence. Comment les paysans qui sont les producteurs des denrées alimentaires et de la richesse réelle de l'Afrique peuvent-ils avoir une activité productive quand ils sont constamment obligés de se déplacer pour fuir l'oppression?

Un des moyens que l'auteur recommande, afin de combattre le fléau de la tyrannie en Afrique, est que le Canada divise son aide officielle en deux parties, une moitié allant aux organismes non-gouvernementaux et privés. Très souvent, en effet, l'aide dirigée vers des gouvernements africains incompétents et corrompus, ne se rend jamais jusqu'à ceux qui en ont besoin.

I. The Importance of the Neglected "Environment"

One of the most fundamental deficiencies of orthodox development economics is its inability to come to grips with the "*environment*" in which development takes place. This weakness arose out of two independent causes.

First, many of the pioneers and experts of the discipline were of Western origin. Understandably, they were not well imbued with operational knowledge and understanding of the socio-cultural milieu which propels individual initiative and enterprise in the developing countries. Clark (1970, 60) was quite frank:

> Some of us get our ideas of agriculture in developing countries from recollections of the Victorian farm labourer, toiling twelve hours a day for a wage which barely sufficed to feed his family. Others have acquired the entirely

> different idea of an over-populated farm land divided into miserably small holdings, which provide neither food nor adequate occupation to their unhappy owners, who spend most of the year resting glumly under a tree.

As a result, myths and misconceptions about the developing world, especially Africa, abound and persist. The problem lies not so much with their persistence but more so with their serving as a basis upon which foreign aid is often structured. While the intentions have frequently been noble, much Canadian aid has inevitably gone to waste largely due to faulty underlying premises. For example, "In 1975, Canada built a $2.5 million semi-automated bakery in Dar-es-Salaam, Tanzania, but often there is no flour to make bread" (*Time*, January 16, 1984, p. 27).

There were blunders by other nations as well:

> The US built 50 crop storage depots in Senegal and placed them in locations the peasants never visited . . . In Sudan, the Soviets built a milk bottling plant at Babanusa. But Babanusa's Baggara tribesmen drink their milk straight from the cow and there aren't any facilities to ship milk out of Babanusa. [Consequently] the 20-year plant hasn't produced a single bottle of milk [*The Wall Street Journal*, July 29, 1985, p.18].

The confluence of myths, misconceptions, and flawed analyses came to a crushing head in the relief efforts during the African famine crisis of 1985. As Joanmarie Kalter observed in a *TV Guide* article (May 24, 1986, p. 3):

> TV's focus on Western relief mirrored the colonial conception of Africans as backward and helpless, a "white man's burden." Consider: of 117 quotes from analysts and professionals in network famine reports, only 18 were the comments of Africans; an overwhelming 94 were from white Americans or Europeans. "I am sick and tired," says Tarzi Vittachi of UNICEF, "of seeing Africa represented only in the white man's terms, as if Africans themselves are inarticulate about their own lives, lazy people waiting with a bowl in hand for help. Where are the African leaders, dissenters, economists and scientists?" he asks. And what about the indigenous relief efforts? Djibril Diallo of the UN Office for Emergency Operations in Africa says that Senegalese fishermen contributed 33 tons of fish to the hungry in Senegal, and that Africans mounted musical

> fund-raisers in the Ivory Coast and Sudan well before Live Aid in the West. . . . This "we-know-best" approach, say development experts, not only contributed to the crisis, but also bedevils our current efforts to help. . . . And so what we offer can be wholly inappropriate. . . . According to a top-level international commission, agricultural aid has . . . ignored the *traditions and knowledge* of African farmers themselves. That knowledge, far from primitive, is in fact "highly complex and organized." The lesson of the famine, its report concluded, is to "stop trying to hand down development and concentrate on supporting initiatives from communities themselves."

A streak of ethnocentricism may be ensconced in this rather cavalier "we-know-best" attitude. It hardly inspired interest in the study and comprehension of the "environment" that prevails in the developing world. This bias was reinforced by a second independent factor.

In the 1950s, the epistemology of development economics began to shift towards mathematical model-building. The Harrod-Domar model was perhaps the first to make its public entry.[1] "Gap models" and a proliferation of other models subsequently followed.[2]

Mathematical model-building induced a propensity to over-simplify, and the need for simplicity led to excessive aggregation. In the process, much substance—vital to the understanding of the process of development—was lost. One unfortunate casualty was the environment. Since it could not be quantified, it was glossed over or, at best, assumed "constant" or unimportant.[3] Ignorance about this environment and its significance still persist in the development literature, doing much to invalidate orthodox strictures on growth and aid.

In the case of Africa's current crisis, for example, it is not so much that African peasant farmers lack knowledge about basic food production; they have been growing food for centuries. Nor is it so much the lack of rainfall which precipitated the crisis. The drought merely exacerbated an already precarious food-supply situation. Food production per person had been declining in Africa well before the drought emerged. It fell 7 per cent in the 1960s, 15 per cent in the 1970s and has continued to deteriorate in the 1980s (Ayittey, 1987b). In 1986, only two African countries, Kenya and Malawi, were characterized by the World Bank as self-sufficient in food (*World Development Report, 1986*, p. 78). Even with no drought, some 35 per cent of Africa's food requirements will still have to be imported (Ayittey, 1987b).

Neither is it so much that African farmers lack access to modern, high-tech farming equipment. In fact, the emphasis on such machinery is often misplaced. In North America, "while some farmers struggle against bankruptcy, the Amish communities in Pennsylvania, Ohio, New York and Canada prosper using horse-drawn farm equipment, 19th-century farming methods and large families. The Amish County of Lancaster, Pennsylvania, is ranked by the US Department of Agriculture among the highest in productivity per acre" (*The Wall Street Journal*, December 4, 1987).

Also, back in 1981, the United Nations Food and Agricultural Organization (FAO) declared that:

> Africa can feed itself. Even without using modern farming techniques such as pesticides and with only the most casual approach to maintaining the soil, the 51 countries of Africa presently have the potential to feed a population 3 times as large as that now living on the continent, even allowing for the fact that 47 percent of the land surface is useless for crops [*FAO Report, 1981*].

Nor is it so much that Africa is poor in resources. In fact, it is ranked as the richest continent in terms of natural resources. Africa has:

> 40% of the world's potential hydroelectric power supply; the bulk of world's diamonds and chromium; 30% of the uranium in the non-Communist world; 50% of the world's gold; 90% of its cobalt; 50% of its phosphates; 40% of its platinum; 7.5% of its coal; 8% of its known petroleum reserves; 12% of its natural gas; 3% of its iron ore; and millions upon millions of acres of untilled farmland. There is not another continent blessed with such abundance and diversity [Lamb 1983, 20].

Nor is it so much that the international aid agencies were excruciatingly lethargic in dispensing aid to Africa. In fact, more than $80 billion has been pumped into the region since 1960. Tanzania alone received more than $3 billion in aid between 1972 and 1981 (Ayittey, 1987b).

Japan, with no known natural resources, prospers, while Africa, with its tremendous resource wealth, starves and is saddled with a $200 billion foreign debt with nothing to show for it except rust, decaying infrastructure, and abandoned factories. So what, then, has caused the current crisis? The real cause has been progressively deteriorating environment which development theorists, experts, practitioners, and aid donors have all but ignored.

Development does not take place in a vacuum. Politics, respect for human rights, guarantees for freedom, cultural practices, and institutions—in short, the *environment*—have as much to do with development as physical increases in GNP. Bauer (1972, 313, 331) put it more succinctly:

> Abilities and attitudes, mores and institutions, cannot generally be quantified in an illuminating fashion. Yet, these are major determinants of economic performance and thus of material progress . . . [Nonetheless,] the most influential publications of the consensus literature either ignore altogether people's capacities and motivations and the social institutions and mores which reflect them or greatly underestimate their significance . . . [Consequently,] the neglect of consensus literature of the non-quantifiable factors behind economic performance has lent an air of irrelevance and unreality to much of both theoretical and applied writing in this area.

Indeed, this neglect partly explains why many development aid programs turned out to be woefully inappropriate.[4] One basic fact, often ignored, is that *peasants*, not urban elites, constitute the majority in most developing countries. Furthermore, these peasants produce the bulk of the real wealth of such countries: foodstuffs, cash crops, minerals, exports, and foreign exchange. Any discipline or program that purports to have as its central objective the economic advancement of the people of the less developed countries (LDCs) must have peasants at the centre of its strategy.

Most importantly, the environment in which these peasants find themselves conditions or determines, to a large extent, their economic behaviour as well as the size, or the lack thereof, of the surpluses that they generate. This environment is composed of two parts: (1) a traditional environment that delineates their indigenous value systems, attitudes, and motivations, and (2) a national environment that is created by the government in power.

The traditional environment would seem to have greater relevance and importance, since illiterate peasants tend to go more by custom and age-old practices than by national policies and decrees they may not understand. However, the national environment is often preemptory. It is defined by rules, decrees, and policies, and maintained with enforcement mechanisms. Lenient or severe punishment may be invoked for violations. If imposed by force and ruthlessly enforced, the national environment may violently clash with or suppress the traditional. Such clashes are commonplace occurrences in the Third World. When they do occur, peasants generally respond by either retreating into their traditional mold—rural life, self-sufficiency, and subsistence farming (Ayittey 1986a, 1986d)—or by voting with their feet out of the country—illegal aliens, "boat people," and refugees (Ayittey 1987b).

In the case of African development, there were two travesties: the neglect of *both* the national and the traditional environments. Even when the national was conducive to economic development, as in such African countries as Ivory Coast, Malawi, and Senegal, the neglect of the traditional spelled doom for many development schemes and projects because they did not fit into the traditional setup.[5] While peasants understood such indigenous esoterica as *abusa*, governments and experts were speaking foreign languages to them.[6] In its 1981 Report, the European Economic Community (EEC) lamented that:

> Many development projects failed because they were on too large a scale and were not adapted to the population and environment they were supposed to benefit . . . [There are] agricultural complexes in Zaire which are still not viable 10 years after completion. The projects of lasting value are generally those which are simplest and directly benefit the local community concerned. [Cited in *West Africa*, January 18, 1982, p. 188.]

In neglecting to explore and understand the peasants' traditional environment and its lexicon, orthodox development economics denied itself clues to the achievement of its central objective: how to coax large surpluses from the peasants and lift them out of poverty.[7]

The neglect of the national environment was even more serious. In the particular case of Africa, accumulated evidence shows that the assumption of "constancy" for either type of environment is invalid. The national environment has encroached upon and destroyed the traditional. With many of their indigenous support systems devastated, millions of African peasants now live in perpetual states of angst, fear, and confusion. Ironically, much of this wanton destruction of the traditional occurred in the name of "development"!

Though the national environment is an amorphous concept, certain pertinent features can be identified for purposes of study with respect to their impact on development:

1. the leadership (personal beliefs, idiosyncrasies, and failings)
2. the nature of the political system or lack thereof (autocracy, stratocracy, gerontocracy; ideological predilections; promotion of democratic freedoms; respect for human rights; freedom of the press and of expression)

3. the nature of the economic regime or climate (market versus *dirigisme*—statism; promotion of economic freedoms, property rights, free markets, and freedom of enterprise).

Each of these broad factors impinges on economic development. Quite often, success or failure at development depends upon the existence of good or bad government and the nature of the political leadership. As Lamb (1983, 65) observed: "Perhaps nowhere in the world do individual countries mirror the character of their presidents as much as in Africa. What a country is often depends solely on who the president is. A new man takes over and the country may move in an entirely different direction."

As a result, continuity of policies is all but impossible. Economic policies, no matter how sound, may suddenly be reversed when a new administration assumes office. Development projects initiated by the previous government may be halted and new ones drawn up. And when the current administration is overthrown, its projects too will be suspended and some old projects restarted or yet some new ones planned. Considerable waste and inefficiency result in the process. Projects that should take a few years to complete take forever in fits and starts. For example, Ghana in 1962 signed a $6.2 million contract with the Soviets for a factory to build pre-fabricated homes. After 22 years, not a single pre-fab had been produced (Ayittey 1984). The project was abandoned when the Nkrumah government was overthrown in a 1966 military coup. It was restarted in 1972, and shelved again in 1978 when the Acheampong administration was removed from office. Yet 500 Ghanaian workers and 13 Soviet experts were drawing salaries until 1978 (*Graphic*, Accra, December 6, 1978, p. 5).

Few would deny that political instability engenders economic instability, a climate that seriously impedes economic development. For example, an economically unstable environment does not promote productive investment. Such an environment introduces a high element of risk and uncertainly into the investment decision-making process. Peasants, despite their illiteracy, are rational and would not invest their time and effort into expanding their farming operations if they knew that the government would forcibly relocate them, seize their farmlands without compensation or sequestrate their farm produce. Even kleptocrats (armed government looters) do not invest in their own countries while they shamelessly appeal for foreign investment.

That an economically stable environment is a prerequisite for successful development cannot be over-emphasized. But this stability is not assured by having some maniac or buffoon declare himself "president-for-life." The political leadership in much of Africa is a disgrace and a failure, using Africa's own indigenous, not foreign, standards. The traditional chiefs of Africa do not impose themselves on their people. They are appointed for life, but they do not appoint themselves. There is a fundamental difference. Native institutions and procedures exist whereby African peasants can remove a chief from office.[8] The 6 million Zulus of South Africa would remove Chief Buthelezi if they so wished.

In stark contrast to native traditions, the political regimes established in much of Africa were despotic. Of the 41 black countries, only three (Botswana, Senegal, and Mauritius) allow their people the right to vote and choose their leaders (Ayittey 1986a). Since 1957, there have been more than 150 heads of state in Africa. Only six (Abasanjo of Nigeria, Ahidjo of Cameroon, Dahab of Sudan, Nyerere of Tanzania, Stevens of Sierra Leone, and Senghor of Senegal) relinquished political power voluntarily. Most of the others, a disgraceful lot, sat there looting and mismanaging their economies until they were booted out or shot.

In general, two political systems in Africa may be distinguished: autocracy (despotism by a civilian head of state) and stratocracy (military despotism). Within each type, there are variations with respect to guarantees of civil liberties and various freedoms. There are milder or gentler forms of autocracy which may be called gentocracy or benevolent dictatorship. African countries which exemplify this type include Cameroon, Morocco, Ivory Coast, Malawi, Tanzania, Tunisia, and Zambia, where the head of state is a civilian.

At the other extreme on the autocratic, civilian-rule scale is the brutal form, which may be called exocracy.[9] Examples include Angola, Equatorial Guinea (under Biyogo), Guinea (under Sekou Tourle), Mozambique (under Machel), and Zimbabwe. In Angola, portraits of Marx and Lenin grace the capital, Luanda, as if Marx and Lenin were black Africans. By the time Equatorial Guinea's president Macias Nguema Biyogo was overthrown and killed in 1979, "all journalists of note had been executed or were in exile" (Lamb 1983, 246). Guinea, a former French colony, was ruled by President Ahmed Sekou Tourle from independence 1958 until his death in March 1984. "During his reign, more than one-fifth of the country's population, some 1.5 million, fled into exile" (*Reader's Digest*, July 1985).

There are also milder and more brutal forms of stratocracy in Africa. The gentler form, stratomocracy for want of a better term, is characterized by Nigeria where some limited freedoms (for example, of the press) exist. The extreme form, strexocracy, is typified by such countries as Ethiopia (under Mengistu), Ghana (between 1981-1983), Liberia (under Doe), and Zaire (under Mobutu).

Zaire is a pathological case of squandered opportunities and debauched "black hope." Of all the black African countries, it possessed the greatest potential of pulling off an economic miracle. It is rich in minerals: diamonds, copper, cobalt, and uranium. It is a huge country, almost three times the size of Nigeria but with only 33 million people in contrast to Nigeria's 65 million. Its agricultural lands are extremely fertile. In fact, FAO once claimed that the Congo Basin in Zaire alone could produce enough food to feed all of Africa. Yet, Zaire starves while its leader, President Sese Seko Mobutu, presides over Africa's most heinous kleptocracy.[10] As Lamb (1983, 45) commented:

> When Mobutu came to power in 1965, Zaire (a former Belgian colony) was a country on the move. Rich copper mines stood ready for exploiting, fertile fields for tilling. By the early 1970s, with copper bringing record prices on the world market, Mobutu, a former journalist and one time army sergeant, found himself presiding over an unprecedented economic boom. His response was to go on a spending orgy that made economists' heads whirl . . . He built palaces, eleven in all, and linked some of them to the capital with four-lane highways. He dedicated monuments to himself and constructed stadiums in which to address his people. [By 1974,] Mobutu was hardly the penniless army sergeant of a decade ago. He was now one of the world's wealthiest men, with assets conservatively estimated by western intelligence sources at more than $3 billion [now over $8 billion]. Mobutu, incidentally, did not have enough faith in his country's economic future to invest at home; like other African presidents, his fortune was in European banks and European real estate.
>
> Of every dollar coming into Zaire, whether it was in the form of a foreign aid grant or a business contract, Zairian officials took twenty cents off the top for their personal cut. In 1977, Zaire's coffee crop was valued at $400 million . . . but only $120 million was returned to Zaire's treasury.

An ebullient President Mobutu once intoned: "I know my people. They like grandeur. They want us to have respect abroad in the eyes of other countries." Accordingly, he built prestige projects. One was a $220 million double-decked suspension bridge he named after himself. One level is for a railroad that does not exist (*The Wall Street Journal*, October 23, 1984, p. 32). By 1982, Zaire was an economic cripple.

Similar wastage occurred in Nigeria. In 1979, favourable world market conditions yielded oil revenues at the rate of $29 billion a year. But much of that windfall was squandered by the ruling elites—looted at the rate of $25 million a day, and wasted on prestigious projects such as a brand new capital at Abuja at a cost of $16 billion (Ayittey 1986b).

As if the oil bonanza was not enough, a $20 billion foreign debt was also racked up.

To assume that all this megalomania and kleptocracy—in short, "environmental defects"—have no bearing on economic development borders on the absurd. Unfortunately, implicit in orthodox development economics, both theory and applied, as well as in many aid programs, is precisely this assumption. It is rather tragicomical to ship aid to an African country when it is fully known that much of this aid will end up in the pockets of kleptocrats. Zaire is not the exception in Africa.

In 1986, the U.S. General Accounting Office (GAO) discovered that more of the U.S. aid was lining the pockets of Liberian government officials than was going to help the population at large: "U.S. economic and food assistance to Liberia has faced a high risk of diversion and/or misuse since 1980, the GAO said in its preliminary report . . . In particular, the GAO says $16.5 million is missing from a food assistance program for fiscal 1983" (*Insight*, March 1987, p. 38).

Aid, as is well known, often does not reach those it is intended to help. One of the most violent ironies of modern times is the fact that the richest persons in this whole world are current and ex-leaders of poor Third World nations.[11] Aid, it seems, now amounts to a perverted redistribution of income from the poor in the rich countries to the rich in the poor nations.

There is no question that the environment that prevails in Africa has had a deleterious impact on economic development. A direct measurement of this is not possible. However, a sense may be gained through comparative analysis. After comparing Africa and Asia, Marsden (1985) concluded that the main reason why "Asia boomed and Africa busted" laid in differences in the nature of government policies —in short, "environment factors"—rather than in physical resources and allocations of foreign aid as stressed by orthodox development models.[12]

Additional support for this intercontinental comparison was provided in March 1987 when the Population Crisis Committee, a Washington-based organization, released its international index of human suffering. Using various data, including GNP per capita, the inflation rate, infant mortality, access to clean water, literacy, and general personal freedoms, the committee ranked more than 100 nations on a scale of 0 to 100 (zero indicating the absence of human misery). Of the ten countries with the worst ratings, nine were black African:

Index of Human Suffering

Country	*Index*
Mozambique	95
Angola	91
Afghanistan	88
Chad	88
Mali	88
Somalia	87
Niger	85
Burkina Faso	84
Central African Republic	84
Zaire	84

Source: Population Crisis Committee,
Washington, D.C., 1987.

The rest of this paper will discuss Africa's record on human rights and economic and political freedoms, as well as freedom of expression and of the press. It is hoped this will help to increase the awareness of flagrant abuses of human rights in the region. An attempt will be made to demonstrate that such abuses and generalized oppression have created an environment that is inimical to further economic development. Without a change or improvement in this environment, no amount of foreign aid will rescue Africa from its economic *cachexia*. The concluding section will suggest ways in which foreign governments such as Canada, and aid agencies such as CIDA, could help achieve an improvement in the socio-political milieu.

II. Human Rights, Freedom, and the "Environment"

Freedom of expression is a basic human right and necessity. It is doubtful if the human species would have developed beyond apes without this freedom. More poignantly, this freedom is a basic economic necessity as well. Economics, by its very essence, embodies the study of competing paradigms or solutions to human wants. By necessity, it entails an element of choice among alternatives, a process which *all* societies without exception must face. For example, every society must decide whether to produce more guns or butter.

Comparisons inevitably must be made among alternatives and debated for an intelligent choice to be made. A free debate of choices is essential for other reasons as well. World economic conditions are constantly changing. New technologies, new products, and new laws and regulations are continually emerging. What might have been a judicious choice in the 1940s may be outlandish in the 1980s. A constant review of changing economic conditions is imperative.

Societies that advance are those that take cognizance of changing circumstances, adapt their policies, and permit exchange of ideas and a free debate for viable solutions to be found for economic problems. It is a shame that we cannot do this in much of Africa—solutions are often imposed by one person. Nor can these solutions be debated for better ones to be found. Consequently, many Africans watch helplessly as foolish policies drag their economies into the doldrums.

Colonialism was invidious. But it has escaped the attention of analysts that even the abominable colonial period was characterized by a greater measure of freedom of expression than prevails in much of Africa today. It is a shame. For example, before much of Africa gained its independence in the 1960s, there were more than 299 daily newspapers there, according to the London-based International Press Institute. Today, there are less than 150 dailies left on the continent, with nine countries having no newspaper at all (Lamb 1983, 247).

Even Bishop Desmond Tutu acknowledges this fact. At the All-Africa Conference of Churches in Nairobi, Kenya, in 1987, he made a remarkable observation: "It is sad that South Africa is noted for its vicious violation of human rights. But it is also very sad that there is less freedom in some independent African countries than there was in the much maligned colonial period" (*The Wall Street Journal*, January 7, 1988).

Of the 51 African countries, only three (Botswana, Gambia, and Mauritius) permit genuine freedom of expression and criticism of government policies, according to the New York-based Freedom House, a group that tracks civil liberties throughout the world. Five others (Ivory Coast, Kenya, Morocco, Nigeria, and Tunisia) allow some restricted freedoms. In the rest of Africa, the media are government-controlled, serving as mouthpieces for one-party states and propagating "revolutionary" ideals. The rule is to toe the government's line or exercise a debilitating form of self-censorship—the least deviation would elicit sanctions, often fatal. Hundreds of African writers, journalists, and poets are currently languishing in jails.

Freedom of expression and of speech, rights which are so vital for Africans to develop their talents and to debate and find solutions to their own problems, is anathema to most African leaders. Gripped by an all-pervasive sense of fear and moroseness, the writing profession perfunctorily rubber-stamps government measures. For decades, absurd economic policies were blatantly pursued in Africa without the benefit of critical evaluation until starvation struck and killed more than two million people in 1985.

Had there been press freedom and freedom of expression, defective policies would have been corrected, Africa's economic atrophy averted, and millions of lives saved. But thousands of editors, journalists, and professionals were exiled, butchered, or jailed for writing something their governments did not like. The result has been an intellectually repressive environment in which creativity is lost and initiative is stifled while the leaders hop from one foreign country to another, frantically searching for *alien* solutions to African problems. Needless to say, African countries sink deeper into an economic miasma, as their leaders globe-trot. Those who had the courage to suggest better ways of solving Africa's crisis often saw their careers, if not their lives, abruptly terminated.[13]

One victim was Professor E. Bortei-Doku, a secretary of agriculture in Ghana. Back in 1983, he suggested that:

> The Price Control Tribunal relax price control laws as a temporary measure to allow traders to bring maize to the market and sell to the public . . . . He also advised the People's Defence Committees to stop seizing maize from traders and allow them to sell to the public. Obviously, he said, those women who buy maize above controlled prices cannot sell a ball of kenkey at one cedi [*Graphic*, March 29, 1983, p. 1].

But emotion triumphed over common sense:

> The Nungua People's Defence Committee called for the resignation of the Secretary of Agriculture, Prof. Bortei-Doku, for he has failed the people.
>
> A letter addressed to the Greater Accra Regional Secretary, Wing Commander Osabu-Kle, accused Prof. Bortei-Doku of playing double standards with his call for relaxation of price controls though he knew the consequences of such a suggestion. The letter which was copied to Prof. Bortei-Doku challenged him to come out with a justification for his suggestion and asked whether, because there is scarcity of food in the system, price control tribunals should be abolished and all persons jailed by them freed [*Graphic*, April 5, 1983, p. 8].

Professor Bortei-Doku later resigned, a casualty of a "revolution" that had lost its head. As events later turned out, in December 1983, Ghana signed an agreement with the IMF and the World Bank to abolish price controls.

This example can be multiplied a hundred-fold across Africa.

> In January 1986, Uganda's Finance Minister, Mr. Ponsiano Mulema, tried to persuade the Cabinet to set Uganda's shilling at a realistic rate, to liberalize trade and to reach an agreement with Uganda's creditors to make way for reconstruction loans. In November, President Museveni shuffled Mulema aside because his ministry failed to administer the price controls which the Minister said were unworkable [*The Economist*, January 31, 1987, p. 38].

In April 1986, President Kaunda sacked the Zambian finance minister, a central bank governor and his own economic advisor for suggesting the removal of price controls and economic reform. The same fate befell Mr. Kengo wa Dondo, Zaire's finance minister, in 1986, and Dr. Sheka Kanu, the minister of finance of Sierra Leone, in April 1987. All these people, and Professor Bortei-Doku, were cabinet ministers. Imagine their fates if they had been private individuals!

Journalists and writers have fared even worse. The following examples detail some of the numerous atrocities:

Nigeria: Dele Giwa, editor-in-chief of *Newswatch*, died when a letter bomb exploded on October 9, 1987. The sophisticated nature of the bomb and its victim's encounter with state security officers shortly before his death led most Nigerians to suspect the government itself. There was certainly a motive. *Newswatch* had earlier interviewed Gloria Okon, said to be a drug courier for the wives of several senior army officers, who died in police custody in Kano in 1985. A lawyer's attempts to prosecute senior officials of the State Security Service was thwarted by the director of public prosecutions for Lagos State. Subsequent events led to the closure of *Newswatch*.

Malawi: Jonathan Kuntambila, chief editor of *The Daily Times*, and two senior journalists of the Malawi News Agency, Sandy Kuwale and Paul Akomenji, have been in jail for more than a year for publishing a statement by President Banda's official hostess, Cecilia Tamanda, that "men cannot do without women," which she later denied.

Zimbabwe: In 1981, the editor of *The Umtali Post* was dismissed on President Mugabe's order after she questioned the large presence of North Korean military instructors.

Cameroon: Officers of the National Documentary Centre, the country's secret police, detained journalists and seized publications they deemed "detrimental to public order." In the 1960s, there were 15 newspapers in Cameroon; today there is only one.

Kenya: Since March 1986, more than 200 people have been arrested in a new wave of detentions without trial under the Preservation of Public Security Act. Among them were Ngotho wa Kariuke, formerly dean of the Faculty of Commerce at Nairobi University, and Father Joseph Mwangi Rugano, who had distributed pamphlets critical of the government. The human rights situation has deteriorated alarmingly. Throughout 1987, Nairobi University was closed intermittently and hundreds detained without trial.

Liberia: The newspaper *Footprints Today* has ceased publication following threats from the security police. The offices of another newspaper, *The Daily Observer*, were burned down in May 1986, apparently by government agents.

Ethiopia: Martha Kumsa, who wrote for the Oromo-language newspaper *Barissa*, remains detained in Alem Bekagne ("End of the World") prison without trial or charges. She was imprisoned in February 1980 for writing about the rights of the Oromo minority.

Zaire: In March 1986, Amnesty International released a report detailing accounts of arrests, torture, and extra-judicial executions by soldiers on February 10, 1985. On the same day, Tchmala Malembwe, a journalist working for the *Courier d'Afrique* and *Tribune Africaine* was arrested.

Ghana: "Ben Ephson, a freelance journalist who has worked on a regular basis for *West Africa* magazine and the BBC World Service, was arrested on September 22, 1987 for gathering economic intelligence data. He has not been charged so far. He suffers from sickle-cell anaemia and has been refused medical treatment" (*Index on Censorship*, February 1988, p. 38).

The case of Ghana is particularly sad. Officially, there is no press censorship. Editors are free to publish what is newsworthy. But Baffour Ankomah, editor of the independent Ghanaian daily, *The Ashanti Pioneer*, has put it succinctly: "You publish what is newsworthy when you want to commit suicide." Private Ghanaian newspapers such as *The Believer, The Palava Tribune, The Punch, The*

Catholic Standard, and *The Free Press* ceased publication after their editors and publishers either fled the country or were thrown into jail.

The end began for *The Free Press* in June 1983, when publisher Tommy Thompson and editor John Kugblenu were arrested and held for a year. Mr. Thompson suffered a massive stroke while in custody, and Mr. Kugblenu died a few weeks after being released in August 1984. Mr. Thompson was rearrested in January 1985 and held for another five months. The subsequent detention of four more of *The Free Press* journalists proved the last straw. On April 25, 1986, the paper printed its last (souvenir) issue. "When detention and death clouds hung over the premises of a paper, then the chemistry of publishing a paper is equally bad," wrote the editor. On the centre pages of the same issue were emblazoned pictures of Nelson Mandela, Bantu Steve Biko, and those of the paper's detained reporters.

South Africa, of course, now occupies the unenviable high altar of press restrictions. In June 1986, more than 600 reporters were detained after press curbs were imposed along with the state of emergency. On December 9, 1986, more stringent restrictions were imposed, requiring government clearance for stories about security-force activities, banned meetings, boycotts, and detainees. "Well, that's it," commented the white-run *Pretoria News*: "Today, South Africa joins such sophist autocracies as Zambia, Mozambique, Tanzania, Paraguay, China and its arch-foe Soviet Russia."

It may come as a surprise to most foreign observers, but the denial of freedom of expression is alien to Africa's own native traditions.[14] Africa had its own indigenous institutions of free markets, free trade, free speech, and some essentially democratic tribal governments for centuries before it was colonized. These institutions were by no means advanced or sophisticated. But they were there, and still are.[15]

As observed earlier, the traditional chiefs of Africa do not declare themselves "presidents-for-life." And they do not declare their villages "one-party" communities or brutalize dissidents. In fact, the chiefs *encourage* and *invite* dissenting and alternative viewpoints, since by custom they must rule by consensus. Nor do African chiefs impose ridiculous price controls on village markets and jail peasant traders who violate them. Even though an African chief is not elected by ballot or universal suffrage, traditional institutions exist for the peasants to remove at any time a chief whom they do not want.

Each African tribe devised its own system of government and succession rules. However, there are striking similarities in their political systems. Most are gerontocracies—government by elders. In most tribal systems, the traditional system of government is composed basically of three units: the chief, a council of elders, and the village assembly.

The chiefs are appointed for life. They do not appoint themselves. Nowhere in traditional Africa do soldiers rule the natives, and nowhere do the chiefs impose *alien* ideologies on their people. Marx and Lenin were not black Africans. Furthermore, each chief governs with a council of elders made up of representatives or heads of the various clans in the village. This council can veto or override unilateral decisions by the chief or remove him if the people so wish. In addition, the chief presides over village meetings where peasants *freely* express their views without fear of harassment.

In their functions as the intermediary between the tribe and its royal ancestors, the arbiter of disputes between families, and the custodian of the communally-owned land, the African chiefs' role is one of consensus, *not autocracy*. Of primary concern to the chiefs is the preservation of their respective tribes. In fact, some Liberian and Ghanaian tribes forbid the enslavement of their own tribesmen. Common sense and custom debar chiefs from pursuing savage policies of oppression and butchery against their own tribesmen. Such policies would not help the tribe to survive.

It is true that bloody tribal rivalries have been commonplace in Africa. Many of these were for survival. African chiefs must and will defend or fight for the preservation of their tribes. In being obsessed more with *inter-tribal* feuds, most foreign observers failed to notice the *intra-tribal* peace and tranquility together with the freedoms tribesmen enjoyed within their own tribes.

The right to such freedoms was customary in many tribes. This was one of the reasons Africans bore "tribal marks" to distinguish them from other tribes, not only for protective reasons but also for the enjoyment of certain customary rights and freedoms. The Ibos, for example, bear distinctive cheek marks, while the Pygmies bip their teeth.

The Ibos, in particular, are especially individualistic and egalitarian, believing that every person is as good as everyone else and deserving of a voice in local affairs. Since everyone had the same right to rise in society, Ibo culture emphasized competition between families, between lineages, and between clans. The Ibos are not unique with these traditional beliefs. In West Africa, similar beliefs can be found among the Kru of Liberia, the Tallensi of Ghana, the Konkomba of Togoland, and the Tiv of Nigeria, to mention only a few.

Some tribes, such as the Ibos and the Abesheini of Kenya, were so distrustful of central government authority that they dispensed with chiefs. They adopted a segmentary type of village government in which there was no central authority but stability was achieved by balancing small equal groups against each other and by ties of clanship, marriage, and religious association. The Ibos, for example, divided each cultural group into a number of clans, which spoke a similar dialect, but had certain customs, traditions, and institutions which distinguished them from others. A typical clan would number between 5,000 and 15,000 people.

The Ibo village government consisted of two basic institutions: the *Ama-ala* (council of elders) and the village assembly of citizens. The *Ama-ala* was composed of heads of the extended families or clans. However, any adult male had the right to sit on the council. This right was not exercised unless a decision was to be taken which affected the individual. In routine matters, the elders ruled by decree and proclamation, but where disputatious decisions were to be made, the *Ama-ala* would order the town-crier to convene the village assembly in the market area:

> At the assembly, the elders laid the issues before the people. *Every man had a right to speak*, the people applauding popular proposals and shouting down unpopular ones. Decisions had to be unanimous . . . If the Ama-ala acted arbitrarily and refused to call an assembly, people could demand it by completely ignoring them and bringing town life to a halt. By ignoring and refusing to speak to an unpopular elder, social pressure often compelled the elder to bend to the popular will. The village assembly was considered the Ibo man's birthright, the guarantee of his rights, his shield against oppression, the expression of his individualism, and the means whereby the young and progressive impressed their views upon the old and the conservative [Boahen and Webster 1967, 170].

The village assembly or meeting was the common feature of government of most African tribal societies. At such meetings, even non-tribesmen were allowed to express their views either directly or through their family heads and clan heads.

In the tribal societies with central governments, the general practice was devolution of power and decision making. There would be the supreme king or chief and then paramount chiefs, sub-chiefs, and village chiefs (a federalist type of government). Each sub-chief would be responsible for his locality.

An unpopular chief, or one who flouts the will of the people, is removed. The removal and installation of chiefs are the duties of "Queen Makers" and "King Makers." Each tribe has its own succession of rules, but when a chief is selected, the nominee is presented to the people for approval. The people may on occasion reject the choice. Being the chief's son does not guarantee an automatic succession. Queen Mothers can intervene to block a chief's son from assuming office if the clan heads find him unfit to govern. To all intents and purposes, this traditional system of government under chieftaincy is democratic.[16] One tragic disservice foreign observers rendered to Africa was to dismiss this traditional system as "undemocratic" simply because of the absence of boxes with "ballot" marked on them.

Most importantly, African chiefs are held accountable for their actions. Consider this incident from Ghana:

> An unspecified number of members of the Oyoko clan, King-makers of the Okumaning stools, have been rounded up by Kade Police for allegedly beating up their chief, Nana Karikari Appau II.
>
> The King-makers have preferred 13 destoolment charges against the chief. These include the alleged embezzlement of $18,182 land compensation belonging to the entire Oyoko family at Okumaning and the signing of a land agreement with an Italian firm, Greenwich Chemicals Company, *without* the consent of the entire family [*Daily Graphic*, October 28, 1981, p. 8].

These features of Africa's indigenous system have been confirmed in a recent study by Kendall and Louw. According to them:

> For a few decades (1850-1890), when black South Africans were allowed to experience relatively free markets, unfettered land ownership, modern technology, equality before the law, reasonable freedom of movement and unrestricted upward mobility for the enterprising, they responded magnificently.
>
> One of the reasons they progressed with such alacrity is unquestionably the congruity between their traditional ways and the market economy—*a fact that has eluded virtually every contemporary analyst*. Pre-colonial African law and custom shared the following features with the free market system:
>
> - Assets such as stock, crops, huts, handicrafts and weapons were privately owned, and land was privately allotted or subject to private grazing rights;
> - There were no laws against free contracts and voluntary exchange ;
> - There was no coercive redistribution of wealth and almost no taxes;

- Chiefs and headmen had few *autocratic* powers and usually needed to obtain full *consensus* for decisions;
- Central government was limited, with a high degree of devolution to village councils, and there was no central planning structure;
- There were no powers of expropriation, and land and huts could be expropriated only under extreme conditions after a *full public hearing* [1987, 18; my emphasis].

If one moves from the tribal level to the national scene in black Africa, the contrast is a disgrace. Those ruling much of black Africa today can scarcely be called "Africans" in the true sense of the word or in accordance with our traditions, but rather exocrats. It is a shame that the freedom from colonial rule Africa fought so long and hard for has now been betrayed.

True freedom never came to Africa. Since the 1960s, there has been a steady erosion of Africa's own native freedoms and rights. After independence, the elites who took power from the departing colonialists never perceived such power in terms of responsibility to serve the "backward masses." The ruling elites used their authority to extract wealth from the masses to spend on prestigious status symbols, show airports, marble buildings, and Mercedes-Benzes in conspicuous consumption and in imitation of rich foreign capitalists. In East Africa, the peasants coined a Swahili name for them: the *wabenzi*—men of Mercedes-Benz.

After independence, two systems of justice were set up: a lenient one for the elites and a swift and brutal one for the peasants. In Ghana, a Ho circuit court sentenced a peasant women to five years imprisonment with hard labour for attempting to smuggle $4.36 worth of cocoa to Togoland to enable her to buy some soap. The same court "sentenced a 22-year old farmer, Geze Rose Adzo, to six years imprisonment with hard labour for allegedly attempting to export a basketful of cocoa valued at C100 ($36.36)" (*Graphic*, July 3, 1980, p. 8). But when the Ghana Cocoa Marketing Board, through negligence, caused the country "to pay over $31 million in foreign exchange as penalty for failing to fulfil its obligations to overseas buyers," none of the directors were jailed or even reprimanded (*West Africa*, March 8, 1982, p. 683).

After independence, the peasants were systematically exploited for the benefit of a tiny minority, the elites. The prices peasants received for their produce were dictated by many African governments, not as determined by market forces in accordance with African traditions. Under a system of price controls, Africa's peasants came to pay the world's most confiscatory taxes. In 1981, the government of

Tanzania was paying peasant maize farmers only 20 per cent of the free market price for their produce. "Studies by the International Labour Organization have indicated that taxation levels in the agricultural sector in Sierra Leone averaged between 30 and 60 per cent of gross income" (*West Africa*, February 15, 1982, p. 446).

Nkrumah introduced price controls into Ghana in 1962. Successive governments so expanded their scope that by 1970 nearly 6,000 prices relating to more than 700 product groups were controlled. Their enforcement reached the height of lunacy between 1980 and 1983:

> In June 1980, a magistrate, Mr. Kwadwo Asumadu-Amoah, jailed a 43-year old petty trader, Madam Abena Amponsah, for 3 years at hard labor for making an illegal profit of $1.50 on 6 cakes of "Guardian" soap. The same magistrate handed down a three-year term at hard labour to an 18-year old boy who made and illegal profit of fifty cents on a packet of matches [*Graphic*, June 5, 1980, p. 5].
>
> In January 1982, Air Force personnel destroyed over 400 tables and chairs belonging to traders at Apampam Store in Takoradi Central Market in a bid to enforce price controls [*West Africa*, February 1, 1982, p. 286].
>
> Markets were burned down and destroyed at Accra, Kumasi, Koforidua and other cities when traders refused to sell at government-dictated prices. In February 1982, the Tamale Central Market was set ablaze, causing the destruction of large quantities of foodstuffs, drugs and imported spare parts. Then John Ndeburge, the Northern Regional Secretary set up a 5-member Committee of Inquiry to investigate the circumstances leading to the incineration of the market [*West Africa*, March 8, 1982, p. 684].

The little food that there was in Ghana was also being destroyed! A market survey done by the government-owned newspaper, *Graphic*, showed that "the market traders in Cape Coast would rather withdraw their goods than bring prices down" (*West Africa* , January 25, 1982, p. 272). The authorities responded by wreaking more destruction "as a warning to traders who had decided to withdraw their wares instead of reducing prices" (*West Africa* , February 1, 1982, p. 286). When that failed to intimidate the market traders, the strexocrats launched house-to-house searches for goods (*West Africa*, February 15, 1982, p. 481).

Those foolish policies were continued for the rest of 1982 and 1983. Price Control Tribunals were set up to hand down even more stringent penalties on peasant food producers and traders:

> The Brong-Ahafo Tribunal imposed a C12,000 fine on Grace Lamiere, a popular baker in Sunyani, for buying a bag of flour *above* the controlled price at Gonnorkrom . . . The Tribunal had earlier jailed Dora Mensah, also a baker, for 6 months and fined her C5,000 for exchanging cedis on the black market [*Ghanaian Times* , June 22, 1982, p. 8].
>
> An Accra trader, Umaro Shaibu, was jailed 4 years by the Price Control Tribunal in Accra for selling a bottle of "Sprite" for C7 instead of C1.50 [*West Africa*, February 28, 1983, p.576].
>
> An accused person and her relatives yesterday wept bitterly before the members of the Price Control Tribunal sitting at Adjabeng in Accra when the panel sentenced her to 12 months' imprisonment plus a C10,000 fine for selling 2 bottles of "ABC" beer at C60 instead of C21. The accused, Faustina Yartey, a housewife will serve an additional 5 years in jail is she fails to pay the fine [*Graphic*, March 12, 1983, p.5].
>
> The Ashanti Regional Public Tribunal sitting in Kumasi has jailed Adu-Twum, a farmer, 5 years with hard labour for purchasing 48 cartons of cigarettes *above the controlled price*. In addition, the Tribunal ordered the bank accounts of one Adjaku, who sold the farmer the cigarettes, his wife and children to be frozen with immediate effect [*Graphic*, March 12, 1983, p. 8].
>
> A pregnant woman's defiance to sell her yams cheaply nearly made her lose her 18-month baby yesterday at the Kumasi Central Market. Her baby was flung to the ground, and she was slapped and kicked by a policeman who insisted on paying C20 instead of C100 for two tubers of yams. Yaa Amponsah, who is five months pregnant, refused to sell her yams at that low price . . . The onlookers, mostly yam sellers, expressed their disgust at the injustices meted out to them by military and police personnel since price controls were instituted [*Graphic*, March 12, 1983, p. 5].

Even the supposedly "backward and illiterate" chiefs of Africa do not perpetrate such heinous atrocities against their own peasants. One does not need a Ph.D. in economics to predict the effects of such absurd policies against food producers and market traders.

Between January 1982 and April 1983, prices of locally produced foodstuffs rose by more than 600 per cent. "The price of a bag of maize, for example, went from C500 in January 1982 to C4,000 in April 1983; and for nine months, bread disappeared completely from the markets" (*West Africa*, July 11, 1983, p. 1597).

The absurdity of the price control measures became apparent when the Government of Ghana could not feed the food traders it had jailed for violating price control laws. "30 prisoners died in Sunyani prison; 39 inmates at another" (*West Africa*, July 15, 1983, p. 1634).

For Ghana's economy as a whole, "GNP per capita declined from $483 in 1979 to $447 in 1981, while by 1983, living standards had fallen steadily to some 16 per cent of 1972 levels. The Urban Consumer Price Index (1977 = 100) averaged 363 in 1980, 800 in 1981, 976 in 1982 and by May 1983 was at 2222.6" (*West Africa*, March 19, 1984, p. 618). The year 1983 was the lowest point to which Ghana had ever sunk. Over one million Ghanaians voted with their feet by moving to Nigeria—the largest out-migration in Ghana's history.

Peasants, the majority in Africa, have fared even worse than the cabinet officers and journalists. The following are a few more examples:

> Ethiopian troops fired on thousands of drought victims who refused to participate in a resettlement in the northern town of Korem. Sources in Addis Ababa said at least 20 people were killed. The UN is investigating the incident [*The Wall Street Journal*, February 12, 1988, p. 1].
>
> In Togoland, soldiers razed villages, killed livestock and beat peasants to clear them off land earmarked for the extension of a national park [*West Africa*, October 5, 1981; p. 2361].
>
> In September 1981, a 43-year old woman, Kporkporvie Dada, was beaten to death by Ghanaian Border Guards for taking a gallon of kerosene to a relative in neighbouring Togoland [*Graphic*, September 23, 1981, p. 3].
>
> At Bantama, Kumasi, a peasant was beaten to death by soldiers for jumping a queue for soap. Then soldiers swooped on a number of people, including girls, some with babies on their backs and bundled them into trucks to be

> taken away to Tema Harbour to load cocoa [*West Africa*, January 31, 1983, p. 295].

> In 1984, the government of Kenya sent troops into the Northeastern Province, ostensibly to quell tribal feuds. Beginning at midnight, February 10, 1984, about 5,000 Degodia Somali living in the area of Wajir were rounded up by security forces and taken to the barbed-wire fenced Wagala airstrip, about nine miles west of town. Degodia women and their children were told to vacate their homes, which were then burned.
>
> Those taken to the airstrip were forced to remove their clothing and remain without shade in this desert area, where the temperature reaches 105 degrees F. during the day and approaches freezing at night. For four days they were denied food and water and were not permitted to say their Moslem daily prayers. On February 14, people were shot, bludgeoned with axes or burned alive. The Degodia stampeded and many escaped in spite of the barbed wire... One tally by observers states that more than 300 people died that day [*Reader's Digest*, July 1985, p. 67].

> In 1972, the government of Burundi set out to massacre every Hutu with education, a government job or money. In a 3-month period, upwards of 200,000 Hutus were slain, their homes and schools destroyed [Lamb, 1983, 12].

In Uganda, more than 600,000 people perished at the hands of Idi Amin, Milton Obote, and Tito Okello. When Idi Amin was killing off peasants at the rate of 150 per day, the Organization of African Unity (OAU) did nothing. Ugandan Anglican Bishop Festo Kivengere was understandably irate:

> The OAU's silence has encouraged and indirectly contributed to the bloodshed in Africa. I mean, the OAU even went so far as to go to Kampala for its summit [in 1975] and make Amin its chairman. And at the very moment the heads of state were meeting in the conference hall, talking about the lack of human rights in southern Africa, three blocks away, in Amin torture chambers, my countrymen's heads were being smashed with sledge hammers and their legs being chopped off with axes. [Quoted in Lamb 1983, 106.]

Little has changed since 1975. Senseless wars and ruinous strife now rage on in at least 15 African countries, in spite of the threat of famine. Peasants see their lives and livelihoods recklessly disrupted by so-called "liberators." More than eight million have fled their villages to escape generalized conditions of terror and violence in Ethiopia, Mozambique, Sudan, Uganda, and other African countries. That figure does not include the millions more trapped within their own countries. Africa, often called the cradle of humanity, today has more displaced people than any other continent. The United Nations estimates that almost half of the world's refugees and displaced people today are in Africa. "In every corner of Africa you will find the refugees," said Godfrey R. Sabati, who oversees UN Refugee Programs in Zimbabwe. "It is a sociological problem. These people have not only lost their home, many have lost hope."

The refugee problem began in the 1960s, soon after independence:

> By 1964, close to a half million Africans had become refugees. The numbers grew to pass the one million mark in 1970. This trend continued throughout the 1970s. By the middle of the decade, well over one-third of all recognized refugees in the world were African, as one out of every 300 Africans had become a refugee. At the end of the decade, the number of refugees and displaced persons passed the 4 million mark. By late 1983, the total number of officially recognized refugees and other politically displaced persons ranged between 5 and 6 million [Rogge 1985, 2].

III. Economic Effects: Impact on Development

How can peasants produce food when they are constantly on the move, escaping terror and violence? Sadly, none of Africa's heads of state has had the wisdom to draw up an Arias-type peace plan for the region, call upon the combatants to sit down at a negotiating table, or at least call for a truce to allow shipments of food to reach the starving. Instead, the combatants continue the carnage, in some cases destroying even relief trucks bringing in food. In October 1987, UN food convoys were attacked and destroyed south of Asmara, Ethiopia. In other countries, the charity itself became fair game for unscrupulous kleptocrats.

Peasants are no fools, despite their lack of education. Any African government that thinks it can outsmart them will only deceive itself. Peasants do rebel against oppression and exploitation. Theirs is a "silent revolution"; they do not make "revolutionary" noises and chant slogans. They quietly vote with their feet out of the country, or produce enough to feed just themselves and their immediate families and let the *wabenzi*, the elites in the urban areas, starve. What one Ghanaian peasant, Amoafo Yaw, had to say in a letter to the editor of the *Daily Graphic* back in 1981 is so eloquently applicable today:

> In this country, much noise is being made about the exploitation of the people...But as far as I am concerned, it is the *state*, as the Chief Vanguard, and her so-called Public Servants, Civil Servants, which actually exploit others in the country . . .
>
> The money used in buying the cars for government officials, the cement for building estates and other government bungalows which workers obtain loans to buy, the rice workers eat in their staff canteens, the soap, toothpaste, textiles, cloth which workers buy under the present distribution system all come from the farmer's cocoa and coffee money . . .
>
> This *state-monopoly capitalism* has been going on since the days of the colonial masters and even our own governments after independence have continued the system . . .
>
> The farmers, realizing this naked exploitation, decided unconsciously that they would no longer increase cocoa and coffee production, they would not increase food production and any other items which the state depends on for foreign exchange. In effect, there will be no surplus for the state to exploit [February 17, 1982, p. 3].

In May 1986, at the Special UN General Assembly Session on Africa, the African delegates admitted that some past policies were misguided. That was the freshest and the most hopeful piece of news to have come out of Africa for a long time. What needs to be done to remedy the situation is to create an "environment" in which the productive class, the peasants, can go about their economic activities peacefully, without harassment, at least as they do in their indigenous tribal systems. Furthermore, there urgently needs to be established a forum or freedom of expression so that Africans themselves can debate and rectify misguided policies. In fact, the most effective aid the world can give Africa is to help reinstitute Africa's own *native* freedom of expression. Notice the emphasis on *native*.

IV. How Canada and Other Western Nations Can Help

Two types of help can be distinguished: unilateral and collective. Unilaterally, Canada could link its aid to African countries to improvements in individual records on human rights. This approach, however, is problematic since "improvement" is subject to wide interpretation. For example, to suggest that 3,000 less people being slaughtered in some African country in 1988 constitutes an improvement, is ludicrous. Those already dead did not live to see the "improvement."

Perhaps a better approach would be to split Canadian aid into two: one half to the government in the recipient African country, and the other to a *private* institute (call it the Ghana Institute, Zambia Institute, etc.) and staffed by private individuals. Such institutes would serve as think-tanks to devise African solutions to African problems, publish these solutions, channel aid to traditional African rulers who are much closer to their peasants, operate an independent press, and promote indigenous African traditions of incipient democracy, free markets, and private enterprise. In traditional Africa, all the economic means of production are *privately owned* with the exception of land. An African government that closes such an institute down would automatically forfeit its half of the external aid.

Collectively, the outside world could bring about a much-needed change in the repressive environment in Africa. This could be accomplished through the United Nations. All sorts of Third World dictators use the UN forum to exercise their freedom of expression and criticize the policies of other nations. Yet, they would not extend the *same* privileges to their own citizens to express their views or criticize domestic policies.

It seems nobody really understands what "democracy" means anymore. Too many countries call themselves "The People's Democratic Republic of . . ." and run elections in which there is only one candidate! Why waste taxpayers' money and time on "elections" in which no one else is allowed to run except government candidates?

Let the United Nations declare "freedom of expression" as a basic human right and put out one definition of "democracy" for all its members to adopt and practise. Countries that did not uphold these standards would lose their membership status. The purpose of the United Nations, lest we forget, is to promote world peace and freedom—not to oppress the people of the world.

Notes

1. This model expressed an economy's rate of growth as equal to its average propensity to save divided by its capital-output ratio. A developing country's inability to grow, according to this paradigm, originated from its low savings rate. Foreign savings or aid, it was argued, could fill the saving-investment gap. For more on this, see Meier (1964) and Hirschman (1981).

2. The original idea can be found in Chenery and Strout (1966). They argued that, quite often, development may be impeded by a country's inability to import a few critical capital goods. This bottleneck may be also relieved by foreign aid. Thus, foreign aid can perform two functions: bridging the saving-investment and/or the import-export gaps.

3. In calculus, constants vanish upon differentiation. Since economic growth was often couched in differential calculus or dynamic analysis, the "environment" had no *a priori* effects upon growth.

4. It is somewhat comical that experts who draw up schemes to help Africa, peasants often have little understanding of those they intend to help. Even the habitats and languages of baboons and whales are carefully studied by natural scientists before they attempt to relocate them or improve their welfare.

5. Many of these projects are discussed in Ayittey (1986c).

6. *Abusa* is an indigenous profit-sharing scheme practised by the cocoa farmers of West Africa. Under this scheme, crop proceeds are divided into three: a third is paid to hired labour, another third is retained by the owner of the farm and the remaining third is set aside for farm maintenance and expansion. Early foreign observers dismissed this scheme as "primitive communistic tendencies." However, this same profit-sharing plan underlies the Japanese success story today.

7. A few sporadic attempts were made by Adelman (1967) and Hill (1987), among others.

8. This topic is discussed at greater length later on in this paper and in Ayittey (1987c).

9. The prefix "exo" is intended to convey the notion of "government by outsiders." It is more akin to a "puppet" regime under which a civilian black African leader ruthlessly imposes a foreign or alien ideology and system on his people and follows the dictates of

foreign (outside) powers. Another term, perhaps, would be black neo-colonialism.

10. For more on Zaire, see Ayittey (1986b).

11. The richest is the Sultan of Brunei with an estimated wealth of over $30 billion. Next in line are the late Shah of Iran (estimated wealth over $20 billion), the Marcoses (estimated wealth over $13 billion), Mobutu of Zaire (estimated wealth over $8 billion), Samuel Walton, an American (estimated wealth over $6 billion), and the Suhartoes of Indonesia (estimated wealth over $4 billion), not to mention the Portillos of Mexico, the Duvaliers of Haiti, and the Somozas of Nicaragua. Note that in the past the kleptocrats always managed to escape with their booty to the West. The Marcoses, for example, arrived in Hawaii carrying suitcases stuffed with $30 million is cash, gold, art objects, real estate titles, and securities *on board a U.S. government plane*. For more, see Ayittey (1986b).

12. For a similar argument, see Krauss (1983).

13. The claim that black Africans are intellectually inferior is, of course, racist. But then where are the "great minds" of Africa? You see, African leaders exiled or slaughtered them! Name three "great" African thinkers besides Wole Sonyinka. It is sad that the intellectual repression instituted by most African leaders operates to validate negative racist imputations.

14. This argument is presented in Ayittey (1987a). Segments from that article have been transplanted here.

15. Historians will affirm that free markets and free trade existed in Africa as far back as the tenth century, well before the continent was "discovered" in the fifteenth century. One example was the trans-Saharan free trade route, at whose southern terminuses free market towns such as Timbuktu, Salaga, and Kano sprouted.

16. Today in Africa, there are many African leaders who shout "People's Revolution" and "People's Power". But *where* is the power of the African people to remove a head of state they do not want? The peasants have this power to remove a chief.

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V.

Human Rights and Development Assistance

International Development Agencies, Human Rights, and Humane Development Projects*

James C. N. Paul

Résumé

Les agences de développement international (ADI), tant multilatérales que bilatérales, se doivent de développer des normes et procédures internes assurant la promotion et la protection des droits de la personne des populations dont les intérêts fondamentaux sont affectés par leurs projets de développement. C'est une obligation découlant du droit international mais cela devrait aussi être reconnu comme un principe de politique de développement. Centré surtout sur la Banque mondiale, cet article élabore les fondements qui mènent à cette conclusion et les implications qui en découlent.

La première partie esquisse le développement du droit international des droits de la personne et démontre pourquoi et comment il s'applique aux ADI, leur imposant des obligations de protéger et de promouvoir les droits "universels" de la personne, lorsque ces agences sont engagées dans des activités de développement qui impliquent directement et particulièrement les intérêts fondamentaux de groupes de personnes spécifiques. On y souligne les "droits à la participation", les "droits relatifs aux besoins fondementaux" (i.e., à la nourriture et à la santé), les "droits à la sécurité de la terre" (pour les petits

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propriétaires et les familles dont la subsistance en dépend), les "droits à l'égalité" (notamment pour les femmes), et le "droit humain au développement". On examine aussi le contenu de ces droits ainsi que leur relation avec les projets de développement.

La deuxième partie, utilisant des rapports d'études de cas et des documents de la Banque mondiale, étudie les implications qu'ont les droits de la personne sur toutes sortes de projets de développement. On y démontre comment les populations affectées par ces projets sont souvent dangereusement lésées (et par le fait même légalement lésées) lorsque les ADI et les gouvernements hôtes ignorent les droits de ces peuples.

La troisième partie énumère les normes et procédures que les ADI devraient intégrer à leurs opérations afin d'assurer le respect des droits des peuples affectés par les projets. Ces normes et procédures sont analogues à celles qui sont actuellement utilisées par plusieurs ADI afin de protéger les intérêts environnementaux touchés par les projets de développement.

La mise en application de mesures de protection des droits de la personne (par des mesures légales les reconnaissant, inscrites dans les contrats de prêt et autres projets) est de toute évidence une tâche politique délicate pour les ADI. Mais la quatrième partie démontre en quoi l'insistance des ADI sur ces mesures de protection ne peut être considérée comme une interférence politique illégale dans les affaires internes des pays du Tiers-Monde. Tous les gouvernements membres des Nations Unies ainsi que toutes les agences officielles intervenant dans le cadre du droit international sont également obligés de mettre de l'avant ces droits, désormais largement reconnus comme "universels" par le droit international, suite à la ratification généralisée des instruments du droit international des droits de la personne. Cette obligation doit donc être respectée dans la conduite du commerce international, notamment dans le cas des affaires affectant de manière directe les droits de peuples discrets.

There is growing recognition that international development agencies (IDAs), both multinational and bilateral, must promote as well as protect "universal" human rights when (in collaboration with governments) they engage in "development" activities which directly affect the basic interests of particular people and groups. Indeed, policy statements recently promulgated by a significant group of IDAs clearly set forth the object of advancing human rights as part of their mission.[1] The time has come to gear performance to these aspirations.

Introduction

The duty to protect and promote rights must now be seen as a mandatory obligation imposed by law; it cannot be ignored, but it should also be assumed by IDAs as a matter of sound policy—policy based on both lessons of experience and a general, international consensus regarding both the ends and means of "development." This paper explores: the legal bases for the obligation; relationships between particular kinds of development projects and particular rights; the kinds of harms caused when these rights are ignored; strategies which IDAs can adopt to meet their duties to protect and promote them; and finally, the question whether assumption of these obligations by IDAs would constitute an illegal "political interference" in the affairs of countries which they seek to assist. These issues are just beginning to receive the attention they deserve. The analysis presented here is meant to be suggestive—to help stimulate the kinds of more carefully focused, action-oriented debates and studies which the subject clearly warrants in view of its great importance to so many people in the Third World.

Part 1 of the paper discusses the legal context. Part 2 examines the empirical and policy dimensions. Part 3 looks at ways by which IDAs can meet their legal obligations. Part 4 addresses the issue of political interference.

The limitations of the paper are many. It focuses on the human rights implications of "development projects" and special-purpose programs, *not* on other kinds of lending.[2] It does not deal with the human rights issues raised by IDA efforts to promote and help the "restructuring" of the economies of debt- and recession-plagued countries. Nor does it address the difficult question of how to determine whether and when the record of human rights abuses of some governments (e.g., Haiti) has become so egregious that all international aid should be curtailed—or the closely related problems of how to structure development projects in countries ruled by authoritarian regimes which lack both popular legitimacy and a credible commitment to respect rights. These problems—and others—are obviously important, but they raise somewhat different, and more difficult, legal and policy issues.

Despite present concern over the debt crises afflicting many Third World countries and consequent shifts in World Bank lending priorities, and despite the need to reform economic policies governing North-South relations, development projects are the object of many loans and other forms of assistance provided by IDAs to the poorer countries. The World Bank is constituted to aid projects, and projects are a primary activity of many other IDAs. Projects—and many special-purpose programs—are seen as a critical means of addressing specific conditions which constrain productivity, growth, and better-ment of people's lives. Of course, these kinds of activities can vary greatly in purpose and scale. But the impacts of many projects and programs on the human rights of identifiable groups are often foreseeable, and when this relationship between a development activity and affected people exists, so does the duty to protect and promote rights of affected people. Establishment of rules and policies to meet this obligation will also make it easier for IDAs to analyze human rights issues arising in connection with other kinds of activities and in relation to other concerns.

It is high time for lawyers and others interested in the role of human rights in development to begin to focus much more clearly and explicitly on ways in which project-type development activities affect the rights of discrete groups of people. An essential purpose of rights law is to impose positive duties on power-wielders to prevent harms to those basic interests which underlie and inform the content of basic rights. The more any development undertaking may impact directly and peculiarly on those interests, the more the need to put it under a rule of law sensitive to the rights of those whose interests are so affected. Unfortunately, too many lawyers, both those who counsel IDAs and those who write as scholars about "human rights law" or about "law and development," have ignored these concerns.

Partly as a result of this default, development projects have been the creation of "experts" and officials who have been uninformed about human rights and unaccountable to the human "targets" of their activities. The law governing these projects (e.g., the law generated by loan and other agreements) has been determined *ex parte*, and some of these arrangements are often treated as official secrets. Many projects have been unilaterally imposed on communities and target peoples. Because human rights of project-affected people are left unprotected, development projects have been lawless activities, demonstrably capable of doing mischief, and sometimes (as we shall see) shocking injustices.

Part 1. International Human Rights Law, its Sources, Content, and Relevance to the Processes of Development

Human rights law is a new, perhaps revolutionary component of international law which has emerged over the past four decades, but particularly the last two.[3] Human rights have evolved from a set of vague, "soft," aspirational pronouncements of the international community to a body of "hard" law principles which now transcend state law and empower people everywhere to demand their recognition.

The original source of, and first great step to create, this growing body of law is, of course the UN Charter, which imposes the *obligation* on all member states—acting both individually and through collaboration—to promote the development and recognition of human rights everywhere.[4] This obligation reflects an essential purpose of the UN system and the law which it is supposed to create. It is an obligation which should be assumed by all international agencies which operate within that system.[5]

The next step was the adoption of the Universal Declaration of Human Rights of 1948, which declared the "universal" rights to be developed and set forth a "common standard of [human rights] achievement" for "all peoples" as well as "all nations."[6] This declaration has been accepted and repeatedly affirmed by the UN community of states in a wide variety of international instruments; for example, in Africa, all Organization of African Unity (OAU) states reaffirmed their allegiance to the Universal Declaration when they adopted the OAU Charter; and, once again, they "reaffirmed their adherence to its principles" when they adopted the Banjul African Charter.[7] Indeed, the human rights principles asserted in the Universal Declaration are now recognized as part of the "customary law of all nations"—enforceable as international law.[8]

The third step was the adoption (in 1966 by the UN General Assembly) of the International Covenant on Civil and Political Rights (Political Rights Covenant) and the International Covenant on Economic, Social and Cultural Rights (Economic Rights Covenant).[9] These covenants were products of a deliberate effort to convert the "inalienable rights" previously set out in the Universal Declaration into more explicit, treaty obligations. Even though they have not been universally ratified and incorporated into all national systems of law—and may never be—they are now treated as statements of rights which are, indeed, universal; they constitute international law which must be respected by all members of the international community.[10]

A fourth step has been the reaffirmation of allegiance to these human rights instruments, and to the processes of developing international human rights law, by the several regional conventions on human rights, such as the African Charter on Human and Peoples' Rights, drawn up within the OAU system.

A fifth—very important—step has been the further systematic elaboration of rights guaranteed by the covenants through various international conventions promulgated by the UN General Assembly and by the world congresses of the ILO and other UN agencies. Many of these conventions (notably article 14 of the UN Convention on the Elimination of All Forms of Discrimination Against Women[11] and a number of conventions of the ILO—such as the Convention on Rural Workers[12]) add content to those universal rights which are most relevant to development processes; they have been drafted by Third World actors with Third World, rural contexts in mind; they are quite specifically addressed to the needs of peasants and other kinds of rural workers, male and female; and they are very relevant to the work of IDAs because they spell out rights to be protected and promoted through development processes.

A sixth step has been the repeated linking of these rights to development policies and strategies in the reports and resolutions of UN-sponsored world congresses and commissions which have focused on particular kinds of development issues. One example is the famous 1976 ILO-sponsored Congress on World Employment, which formulated the "basic needs" approach to development—an approach which proclaimed the primacy of rights to food, health, and education in development planning, and emphasized the role of participation in the realization of basic needs.[13] Another example is the centrepiece resolution of the 1979 FAO-sponsored World Congress on Agrarian Reform and Rural Development, which reaffirmed the central importance of the basic right of participation in rural development processes and the rights of rural workers to form their own organizations as vehicles to exercise that right.[14] There is also the recent report of the UN-sponsored Brundtland Commission, which stresses the link between human rights and development which is environmentally sustainable.[15]

A seventh important step has been the repeated reaffirmation, incorporation, and elaboration of these basic rights in resolutions and declarations of the UN General Assembly dealing with international cooperation to promote development. For example, the long-debated, Third World sponsored Resolution 32/130 of 1977 reaffirmed the "indivisibility" and "interdependence" of the political and economic covenants and the "inalienable" character of the rights they set out.[16] The 1986 General Assembly Declaration on the Right to Development is a most significant further example. This declaration, adopted by an overwhelming vote (all Third World countries in favour) asserts, in effect, that international human rights are indispensable, interdependent ends and means of development; and international development agencies are clearly bound to promote them.[17]

Finally, there has been a growing awareness among IDAs of their obligations to protect and, indeed, promote rights. This awareness has been sharpened by criticisms and pressures from legislative bodies, environmentalists, human rights advocates, women's organizations, and NGOs concerned with development issues and the plight of particular peoples harmed by development activities in all parts of the world. There have been growing concerns about the wisdom and, indeed, legality, of providing any form of development assistance to the agencies of lawless governments which systematically and notoriously violate the rights of their people. For well over a decade, IDAs have recognized and espoused the role of participation in development processes. In one way or another, a number of bilateral agencies have been forced, or have determined *sua sponte*, to examine and articulate policies governing the role of human rights in their programs. No IDA can now avoid this task. The role of human rights in law governing development assistance can no longer be a subject for abstract, academic debate. The problem for IDAs is to develop new, explicit standards and procedures which will translate human rights commitments into action. That task calls, in part, for a far more sensitive understanding of relationships between particular kinds of basic rights and various kinds of development activities.

A General Approach to Understanding the Importance of Rights in Rural Development

A starting point may be to understand several propositions about the nature of basic human rights and the processes which bring them into real existence in quite different social settings.

1. *Interests*. Rights are legal devices which have been conceived and created within "modern" systems of law to protect basic interests: widely shared, deeply felt needs, values, and concerns which are given legal recognition. The basic interests of the rural poor in Third World countries are not the same as—and indeed may sometimes sharply conflict with—those of urban elites and, often enough, rural elites. The basic interest of a self-provisioning family in the land they use, in the food system on which they rely, in access to essential knowledge and resources are unique to people in that situation. The basic interest of rural women may differ in part from those of men. Rural communities may not only compete with cities for essential services, they may also require very different forms of services and structures to provide them. Rural workers may suffer when they are forced by government regulation (e.g., of prices) or unconscionable contracts (often imposed by state enterprises) to sell their produce or labour for ruinous returns *and* when they are denied rights to bargain for better terms. The identification of the particular interests of a particular rural group or community obviously calls for their participation, their articulation of their interests.

2. *Empowerment*. Rights legitimize the efforts of people, acting collectively, to identify and articulate interests, demand appropriate protections when these are threatened, and redress sufficiently to restore an interest when it has been harmed. A rich literature on participation teaches that when people gain knowledge of the legitimacy of these efforts, they become empowered in psychological terms, hence more capable of self-reliant involvement in their polity,

more capable of developing human rights geared to local needs, more capable of making democratic structures work over the long run.

3. *Component rights.* Basic rights guaranteed by constitutions or the International Bill of Rights are usually stated in very general terms. They can only gain meaning in relation to specific social contexts when people who believe that their basic interests are threatened by a particular activity demand protections appropriate to the threat. The process of rights development is, in part, a process of developing particular component rights geared to the context of specific needs of particular groups for particular forms of protection of those basic interests which are promised by the declaration of the general right. The right of rural women and children to food may, in a particular community, force our focus on the need to protect their access to land sufficient to supply family needs, or on problems of environmental degradation, or on needs for better storage or distribution systems—or on other practices which threaten their supply of, or access to, food, water, health care, and other necessities. The causes of hunger help us to understand the component protections (or rights) which give meaningful content to the right to food in particular social and physical environments.

4. *The symbiotic relations between basic rights.* All basic rights seem grounded in a belief that they may help one to live a life befitting the dignity we now ascribe to the human person. Rights to food, equality, and participation are simply extensions of that principle, and the enjoyment of each of those rights requires enjoyment of others. The right to food (e.g., the protection of local, rural food systems) can only be protected through the exercise of rights of participation; the central purpose of participation is to promote and protect enjoyment of social and economic rights. In this context, the alleged dichotomy between economic rights and political rights should be seen as mischievous jurisprudence.

The Content of Some Rights Particularly Relevant to Development

For the Third World rural poor—and protagonists of *their* very real but regularly neglected interests and needs—four basic, universal rights seem important. They are: (1) rights of participation, (2) basic needs rights to food, health, education, and security in land, (3) rights to equality, and (4) the emerging human right to development.

1. *Rights of participation.* These rights are guaranteed by the Universal Declaration, the UN covenants, numerous ILO conventions,

and other international legal instruments.[18] On many occasions, the UN General Assembly—and the world congresses sponsored by UN agencies—have declared these rights to be essential to the processes of development. Indeed they are; for unless people can exercise rights of participation, they are powerless to assert and secure other rights.

Yet participation is an elusive concept; the term is often used ambiguously in development literature. Participation can be promoted to perform many functions: from seducing and coopting to more authentic power-sharing, from imposing the will of some majority to achieving consensus and "due process" for those whose interests are most at stake. There are, of course, many forms of participation: from voicing opinions and voting to protest and strikes, from challenging decisions in tribunals of review to sharing power to make the decisions. Participation can come at many stages of an activity: from initiation and planning a project through implementation to review, regulation, and evaluation of its management.

Thus, rights of participation can vary in purpose and scope; they must be adapted to the occasion. The more the basic interests of particular groups are especially affected by a proposed development activity, the more they must be capacitated and empowered to identify, assert, and protect their interests in relation to that activity. This goal, mandated by law, can only be realized by according a broad array of rights, such as rights of project-affected people to enjoy:[19]

- Timely notification of the project proposal and access to information about it: rights which are frustrated by rules and policies of both IDAs and governments that regularly treat development plans, decisions, reports, and operating rules as state secrets.
- Access to legal resources: rights which are frustrated by failure to provide rural people with knowledge of their legal rights and capacities to exercise them.
- Power to form their own self-managed associations and engage in collective activities: rights which are regularly frustrated by national regimes of law and practice regulating formation of associations, by practices of local officials that deter formation of "unauthorized" groups and collective action, and by deliberate efforts of development agencies to coopt and manipulate grassroots collective activities.
- Freedom of communication: rights which are regularly suppressed by oppressive enforcement of laws dealing with public demonstrations and protest—often the only means of expression available to poor people.
- Access to the media: rights regularly frustrated by government monopolization of the media, or by social gaps which

separate the independent press from rural communities, notably the concerns of the rural poor.

- Access to officials and agencies: rights which are frustrated by the absence of regimes of law requiring public hearings on measures proposed and due process for people who claim to be harmed by official actions.
- Access to institutions (courts or other agencies) which can redress legal harms and impose accountability: rights regularly frustrated by the absence of legal resources for project-affected people, by the insensitivity of courts to the interests of project-affected people, and by legal doctrines such as "immunity," "standing," and "justiciability" that can be used to insulate agencies and officials.

Thus, the human rights concept of participation is much more tough and explicit than the "soft" notions often propounded by development "experts" who, insensitive to rights law, discuss participation as if it was a sociological variable to be manipulated at the discretion of those who control projects. Perhaps the most important of the component rights which must be promoted are rights of association and collective action. Since poor people, individually, are usually uninformed, powerless, and historically excluded, their participation can only be developed and exercised through the formation of endogenous, self-managed organizations. Rights of project-affected people to form such groups and engage in collective activities have been clearly recognized and emphasized in many international instruments. For example, the 1979 FAO-sponsored World Conference on Agrarian Reform and Rural Development declared, in its centrepiece resolution, that:

> Participation of the people in the institutions and systems which govern their lives is a basic human right and also essential for realignment of political power in favor of disadvantaged groups and for social and economic development.
>
> Rural development strategies can realize their full potential only through the motivation, active involvement and organization at the grassroots level of rural people with special emphasis on the least advantaged strata, in conceptualizing and designing policies and programs and in creating administrative, social and economic institutions, including cooperative and other voluntary forms of organization for implementing and evaluating them.[20]

The resolution then went on to demand that all governments *ratify* and promote recognition of ILO Convention 141. This convention, overwhelmingly adopted by the International Labour

Conference of 1975 (and now ratified by a large number of Third World countries), calls for legal recognition of a universal right of all rural workers to form rural organizations of their own choice, free from state interference.[21] The term "rural workers" includes smallholders, tenants, labourers, sharecroppers, and rural women in their multiple roles.

The ILO conference envisages rural organizations as vehicles to generate knowledge and awareness, to defend the interests of rural workers, and to permit more effective participation in state structures —participation in not only the formulation and implementation of programs of rural development (at all stages), but also in the evaluation and determination of accountability of those who manage them. Further, rural worker organizations are seen as vehicles to secure direct access to goods and services controlled by the state. They are also vehicles for initiating local self-managed, self-help projects and group-managed businesses.

Convention 141 is an exact counterpart of the much-celebrated conventions 14 and 87 which deal with industrial workers. A great deal of "law" has been developed by the ILO through specific interpretations of these earlier conventions on workers' organizations—interpretations requested when workers' organizations have alleged that particular laws or practices violate their rights. Most of this jurisprudence can be carried over by analogy to Convention 141.[22] Like conventions 14 and 87, it could become an international Magna Carta for rural workers—if they can become empowered to use it in the same way that industrial unions have used these conventions over the years.

Indeed, the state's role as facilitator of these activities—rather than regulator—is what must be stressed. Clearly, the intention of Convention 141 was that the state—and obviously IDAs which work with states to "develop" rural areas—should assume *affirmative* obligations to foster, not frustrate, autonomous rural workers' structures free from official manipulation, in order to encourage free participation. States and IDAs which initiate projects have a *legal obligation* to assure that this is done—and done at a point in time and in ways which allow participation in every stage of a project cycle.

2. *Rights to food, health, education, and security in land.* The UN Covenant on Economic Rights—and many later, important international legal instruments—have declared the existence of the universal rights of all people to food, health, education, and other necessities of life.[23]

Of course, it is sometimes said (all too often by lawyers) that social and economic rights, such as the right to food, are not really rights at all because: (1) these rights are expressed in such broad terms that they lack operative meaning (e.g., what specific entitlements are guaranteed by a right to food?), and (2) there exist no legal remedies to enforce these rights (e.g., courts and other forums lack power to enforce demands for food or to mandate remedies for food shortages). Thus, it is said, these rights are really only affirmations of the moral obligation of governments to provide for basic needs to the best of their capacities—obligations to be discharged by benign planning and administration. Indeed, some discussions of basic-needs rights proceed on this assumption—sometimes even viewing these rights as justification for authoritarian measures which violate other rights.[24]

Of course, any government worthy of legitimacy must recognize its moral obligation to promote satisfaction of basic needs. But that hardly ends the matter. The covenants declare that rights to food, health, and education are rights of *people* which transcend and limit the powers of government, and *empower people* to impose accountability on those who abuse these limits. This proposition is crucial when viewed in the context of development projects, because (as shown below) a great many of these activities run roughshod over peoples' interests in health, food, land, and education (i.e., access to knowledge which enables one to participate effectively in development processes).

Basic-needs rights, like the other universal rights in the UN declaration and covenants, are obvious corollaries to one's right to life and to live that life in ways befitting the dignity we now ascribe to the human person.[25] Just as these core values are protected by various civil and political rights (e.g., to the equal protection and due process of the laws), so they are protected by rights which empower people to demand equitable access to resources essential to a life with dignity. Thus, each of the basic-needs rights (like rights of participation and equality) are aggregations of component rights which entitle people threatened or victimized by hunger, disease, and ignorance of essential knowledge to identify, protect, and redress man-made conditions and practices that plainly contribute to those evils.

The challenge is to develop, in very different social contexts, the component rights which enable particular, victimized, or threatened communities to protect and enjoy conditions which permit realization of basic needs. The task is to identify, in particular settings, those particular practices which contribute to unacceptable deprivations of basic needs; and it is a task which requires the participation of those affected. Thus, participation rights and basic-needs rights are indivisible and interdependent.

The right to food provides an example. While, of course, the causes of food shortages and malnutrition are multiple and complex, it is notorious that rural communities—notably smallholders, notably women and children—are usually the first and major victims of a food crisis. And it is equally notorious that these crises are, in part, the product of some combination of man-made practices, such as:

- the degradation of physical environments
- the withdrawal of fertile land from production of basic food crops
- population increases and shifts
- poorly planned resettlement schemes
- neglect of smallholders and subversion of indigenous subsistence agriculture and indigenous food systems
- neglect of infrastructure for local food storage and distribution
- unfair terms of trade and discriminatory subsidies which deter production of surpluses or distort their distribution
- lack of research, credit, extension, and inputs directed towards self-provisioning farmers
- discriminations against, and neglect of, women farmers.

These kinds of practices *can* be identified and then remedied by corrective measures; but it is clear—from an abundance of studies—that those who are threatened or victimized must be parties to the processes of identifying wrongs, wrongdoers, and remedies. Similarly, it is clear (as discussed below) that most rural development projects have some impact—or multiple impacts—on the food systems of communities to which they are directed. But quite often these consequences cannot be adequately understood and estimated without the participation of the very people who will be affected in different ways by the project, who will be the victims of official mistakes or neglect.[26]

3. *Rights to equality*. These rights empower people to prevent or redress discriminatory practices which affect the allocation of essential resources, services, and opportunity. They are guaranteed by the UN declaration, the covenants, and (particularly important for present purposes) by the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women (commonly labelled the "Women's Convention").

Historically, discrimination based on class, ethnicity, sex, and other identities has been built into the political-economic systems of most countries. In Asia and Africa, these inequalities are legacies entrenched not only by history and culture, but often by geography and the social structure of post-colonial states. Much has been written to portray the kinds of discrimination which have been practised in many countries against peasants and rural workers, regions and cultural or ethnic groups, depressed castes, and rural women. The reform of national law to change these historic patterns is obviously an important subject, but it is one in which the responsibilities and role of IDAs may be attenuated, at best.

Here our focus centres on the responsibilities and role of IDAs to empower vulnerable groups to prevent discrimination and promote equality of opportunity *in the context of development projects*, notably projects which allocate goods, services, and opportunities.

Article 14 of the UN Women's Convention—which should certainly figure largely in the design of IDA projects—provides a useful approach because it focuses closely on those rights which are particularly important to rural women in development processes and projects. Note, too, that this convention empowers not only women but all other identifiable groups victimized by discriminatory practices which frustrate opportunities for development. These practices include:

- discrimination in the allocation of credit, inputs, and other agricultural services
- discrimination in commodity price-fixing (where government agencies engage in this practice)
- discrimination in identifying needs of particular groups for particular resources or services essential to their needs (e.g., neglect of critical needs of women for potable water, fuel, health services, and education)
- discrimination in the allocation of services and resources essential to the food-production and storage needs of self-provisioning households
- discrimination against family food producers (or condonation of discrimination) in regard to rights to control land which they cultivate
- discrimination in regard to opportunities to form or enjoy membership and equal rights of participation in cooperatives and other structures which provide access to markets, services, and resources
- discrimination in the relations and dealings between officials and women, or members of other historically vulnerable or dependent groups.

Of course, enactment of formal, generalized legal protections (e.g., via national legislation) is one way to try to prevent these harms. But experience surely teaches that legislating change must be accompanied—perhaps preceded—by grassroots efforts to educate and empower victims of discrimination to understand their rights to equality of treatment.[27] In that way, the victims of discrimination may decide for themselves—in light of their culture, needs, and other factors—what particular practices they need to resist and change, here and now. The function of IDAs is not to impose their model of equality, but to help empower victims of discrimination to articulate and assert their rights as they perceive them. From this perspective, the development of endogenous, self-reliant structures of participation is, again, essential. Agencies which design and administer development projects are often in a position to encourage these processes, just as they are positioned to discourage acts of discrimination by other agencies or officials. It should be the obligation of IDAs to help project-affected people to understand their rights to equality, and to insist that there be processes and remedies enabling them to vindicate those rights.

4. *The right to development.* This is a new, inadequately understood addition to the array of rights developed through the UN system. Some of its content must be clarified, and some is problematic. But insofar as the right proclaimed is a *human* right which is explicitly concerned with the role of other well-recognized rights in the processes of development, it must certainly be taken seriously by those who engage in development activities.

The idea of development as a *human* right owes much to the distinguished African jurist, Keba Mbaye. His influential advocacy in the 1970s inspired others to help formulate the concept and move UN agencies (e.g., the Commission on Human Rights) into action.[28] A significant step was taken when, in 1979, the secretary general of the United Nations (responding to a request from the commission) issued a report on the existence of the right. Despite its verbosity, incomprehensibility (in various places), and other flaws, this report conveyed an important message.[29] The secretary general declared: "A general consensus exists as to the . . . elements . . . of the concept of development." The "elements," reduced to plainer English, were:

1. The realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development.
2. The human person should be regarded as the active subject, not the passive object, of development processes.
3. Development requires the satisfaction of both material and non-material basic needs as a basic priority.
4. Respect for human rights and redress of historic discriminations are fundamental to the development process.
5. People must be able to participate fully in shaping change in their social and physical environments; they have a basic right to do so.
6. The achievement of individual and collective self-reliance must be an integral part of these processes.

With this concept of "people-centred" development as a major premise, the report emphasized that the promotion of rights already guaranteed by the International Bill of Human Rights—by states acting individually and collectively through international organizations—was basic to the processes of planning and producing development. Many proponents of this new right also saw it as a right of states, a right which imposed duties on affluent governments to aid poorer ones.[30] The definition of that (state-centred) right and the means to realize it remains a quite problematic and controversial, albeit important, subject of international law. But from the beginning, the right to development was also seen as a *human* right—one which *empowered people*: development, as conceived above, was a *process* of designing and implementing programs to assist *people*; and the right to development (analogous to the right to due process of law) entitled those people to *processes of development which respect and promote their rights*—notably rights of participation.

The right to development as a "right of people" was incorporated (albeit without definition) in the Banjul African Charter.[31] A further very significant step, taken within the UN system, has been the drafting and enactment of the UN Declaration on the Right to Development. It was submitted to the General Assembly in 1986 and approved by a vote of 146 to 1 (the United States stood alone in opposition and eight Western governments abstained). The declaration may be a model of compromises, but it is hardly a model of clarity. Some propositions are problematic on many counts.[32] But some, going to the essence of the message, seem quite clear; and *on these points there may be little disagreement* about the validity of the declaration as an articulation of international law, and as a formulation of a basic human right. These propositions:

- Affirm the concept of people-centred development articulated by the secretary general by declaring that "the human person is the central subject of development."[33]
- Confirm the principle that human rights are means as well as ends of this kind of development.
- Underscore (as have so many other assembly resolutions) the central importance of participation as both a right (or bundle of rights) and a means to realize other rights in people-centred development.
- Impose the obligation on national and international development agencies to respect and promote human rights in the processes of development.
- Empower people, notably the intended beneficiaries of development, to demand accountability to these principles.

A UN declaration is a pronouncement which is supposed to carry more significance than an ordinary assembly resolution, particularly when it is the product of long labour, reflects an overwhelming consensus, conveys a clear message in regard to the application of established principles of international law to the conduct of existing international practices, and imposes reasonably clear and manageable duties on those who engage in these practices. The Declaration on the

Right to Development has been criticized, indeed deplored, because it fails to meet these and related criteria.[34] The criticisms are understandable insofar as the declaration asserts the "rights of *states*" to peace, security, development assistance, and a more equitable international order. These conditions may, indeed, be necessary to the realization of people-centred development, but, when prescribed as rights, as they are in the declaration, the prescription becomes problematic if the criteria noted above are applied. At least that explains why most major donor governments abstained or (in the case of the United States) opposed the resolution.[35]

But the criticisms are quite misplaced insofar as the fundamental *human* rights message of the declaration is concerned. The importance of defining development in terms of people who are the victims of underdevelopment and maldevelopment, and the need to promote *their* rights through *their* participation in development processes, has been a central goal of advocates of the human right to development.[36] In the sometimes-muddled deliberations leading to the declaration, there was a consensus on this theme.[37] No one has gainsaid it, and many of the Western governments which objected to it (on other grounds) have officially espoused these principles.

Thus the declaration conveys a clear message regarding the role of human rights: it speaks to those who do development through long-established international structures and practices; it tells them to promote rights, notably through provision for participation, in the design, management, and control of development programs. In regard to development projects which impact on people, the import of the command is especially clear. The "law" governing international development projects (e.g., agreements, operating procedures, and usages) must impose duties to protect and promote the rights of those affected by project activities. This is hardly the assertion of a new right; rather it is a logical application of the mandates of existing universal rights law.

Part 2. Policy Implications and Lessons of Experience: The Consequences of Ignoring Rights

Experience with development projects vindicates the normative propositions asserted above: (1) *failure to build enforceable human rights protections* into all stages of "risk-prone" development projects often contributes to the infliction of serious, unredressed harms on vulnerable people, (2) *failure to promote awareness and exercise of human rights*, notably rights of participation, in all stages of poverty-oriented projects frequently contributes to their failure to reach and benefit intended beneficiaries, and often to a worsening of their condition.[38]

Risk-Prone Projects: The Need to Protect Rights

Certain kinds of development projects are fraught with risks of harms—especially to those who are already vulnerable in economic and political terms. It seems inexcusable that these projects could be initiated and put in motion without according any meaningful participation and due process to those put at risk. When the risks materialize into devastating human harms, it seems even more unjust, by any reckoning to proceed through the project phases while denying the victims the means of prompt, full, and fair redress. Yet the history of "development" abounds with illustrations of these wrongful practices.

Infrastructure projects. Projects to construct large dams, major transport and other facilities have been a major source of harms inflicted upon vulnerable people. The environmental consequences of many of these projects are now notorious.[39] Usually, they also produce human displacement and impoverishment. Families are stripped of their means of livelihood. New classes of landless workers are created, or new communities of squatters, tenants, or resettled people who face continuing risks of further eviction. While attempts are sometimes made to compensate victims of displacement, there is considerable evidence to suggest that these programs, at best, fail to provide adequate reparation for all the losses inflicted. Similarly, efforts to resettle displaced people are all too often flawed, in both planning and administration, by practices which violate rights and inflict economic and other tangible harms.[40] For example, involuntary resettlement projects often use coercive means; communities are separated; families often suffer losses of animals and unharvested crops—and hunger, disease, and other hardships. They are often relocated into unsuitable environments in terms of health, security, and self-provisioning agriculture. They are sometimes victimized by corrupt officials and speculators who arrange sales of lands identified for relocation at exorbitant prices. The ultimate outcome of these and other abuses is often further displacement.

Displacement produces political and cultural harms as well as economic damage. Poor people who lose possession of ancestral family land usually lose status and dignity; links to a past, a way of life, and security are destroyed. On a larger scale, communities and cultures are dissolved. Displaced people become "refugees," even though they never cross national boundaries; they are peculiarly powerless and thus vulnerable to all kinds of other human rights violations. Dependent on officials or patrons for satisfaction of essential needs, they are often easily deterred from engaging in any meaningful processes of political participation; at the same time, they become political pawns of those on whom they have become dependent.[41]

Sometimes, victims of these wrongs search desperately for review and redress. A World Bank project officer reported the anguish and anger of the victims of a dam project in the Philippines: "A whole municipality was going under water. [We] were drowning a whole municipality, even its mayor . . . . They wrote to McNamara, to the Pope, to everybody . . . . There is no doubt that OED [i.e., the project evaluators] will kill us on this one."[42]

Reports from groups in India displaced by large-scale dam building projects have revealed the kinds of serious flaws in the legal regimes and practices which government agencies follow when they purport to provide compensation to families whose lands are expropriated, i.e., the lack of human rights protections and processes governing the project:

> When expropriation is undertaken, governmental bodies charged with implementation often find themselves under heavy pressure to reduce costs and expedite timetables. Usually there is little effort to investigate and understand the position of occupants and their system of land tenure. Their objections to the project are rarely heard in any formal, arbitral sense; indeed they are often suppressed. The lands in question, or large portions, may be declared "unoccupied" and "public trust" lands and evictions ordered. Where compensation is promised, the process all too often lacks any system of rules essential to assure fair reparation for those evicted. The burden is cast upon occupants to prove the existence of their holdings, and the proof required is difficult, at best, to produce, particularly when officials demand written evidence from illiterate people who speak a different language and hold land under customary systems of tenure peculiar to their district. The formulae for determining compensation are set unilaterally. The fund set aside to defray awards is often woefully inadequate to pay for all the costs inflicted. In essence the process is lawless: the absence of clear, published procedures to protect occupants enables government to run roughshod over them.[43]

Modernization of agriculture. This is an oft-used label for a second, notoriously risk-prone category of projects. They usually entail external, often expensive interventions to change the commodities farmers produce, as well as the organization, methods, and technologies of production. The goals of these projects may include: increasing the output of commercial, often export, crops; developing state-fostered agribusinesses; producing food for government corporations to sell to urban populations. Modernization projects appear in various forms: e.g., the development of plantations or ranches; the introduction of irrigated farming; the conversion of peasants into cash-crop producers through various forms of "contracts" between producers and those who supply inputs and purchase the crop; and the channeling of resources for research, extension, credit, inputs, feeder roads, and marketing to support these ventures.

The promoters of modernization projects are often an alliance of local commercial farmers and agribusinesses and parastatal and other government agencies—sometimes all too readily aided and abetted by IDAs. They are usually the primary beneficiaries, but many of the farmers who become the producers for these projects are often victims of risks which have long been well known and widely documented.[44] They include:

1. Landlessness. Modernization often calls for large-scale, capital-intensive farmers. This may be achieved by the extraction of land (through coerced sales or expropriation) from smallholders by firms (often parastatals) which create plantations. In other project contexts, wealthier, "progressive" farmers may use various methods (notably money-lending) to gain control over the lands of their marginal neighbours.[45]
2. Indebtedness. Small farmers drawn into schemes for the production of cash crops requiring purchase of new seeds, inputs, and other factors from agribusiness are usually vulnerable to impoverishing indebtedness, which leads to loss of control of lands and income and to malnutrition.[46]
3. Worker exploitation. Landless (or land-poor) rural workers are often forced, by circumstances, to become wage workers for agribusiness. The terms of employment and physical conditions under which they work are frequently exploitative. Agribusinesses often monopolize both markets for cash crops and the sale of inputs needed to produce new crops—with the result, again, that producers are exploited.[47]
4. Loss of market, crop loss, and crop displacement. There is always the risk, all too frequently realized, that the market for the new "modern" crops (on which producers must now depend for their livelihood) will deteriorate. There is the further risk that new seeds and plant varieties prescribed by "engineers" of development projects will prove vulnerable to local ecological conditions. Seldom are producers insured against these outcomes; yet they are the primary losers.[48]
5. Environmental degradation. The depletion of soil resources is often the result of mono-cropping and other practices introduced by modernization. Another threat, serious over the

long run, is the loss of valuable genetic resources when traditional plants are replaced by new foreign varieties.[49]

6. Food shortages, hunger, and disease. Modernization often means loss of land needed to maintain local self-sufficiency in food production; the result is that economically marginal families become increasingly dependent on other producers and on uncertain markets to purchase food supplies. Irrigation projects often produce dangers of malaria and bilharzia.[50]
7. Exclusion—including the exclusion of women. Smallholders, rural workers, and women are regularly excluded from any form of meaningful participation in the planning and management of modernization projects. Denied rights of participation and access to decision makers, they are usually unable to secure protections or redress against the wrongs noted above.[51]

The World Bank has acknowledged (albeit with little sensitivity to the human rights implications) that these kinds of harms occur. Some modernization projects

> have made the landless worse off. In some instances financing for [mechanization] . . . and modern rice mills has reduced employment thereby adding to rural poverty. Mechanization has also encouraged landlords to evict tenants . . . . In the Muda project, the introduction of combine harvesters also encouraged landlords to evict tenants . . . . In one East African project inadequate attention to the social and political context helped create a system of absentee landlords . . . . Other projects have ignored the role of women in the production processes . . . and adversely affected women's income and earning capacity.[52]

IDA-financed projects to build dams and promote irrigated farming and commercial agriculture in Northern Nigeria (and elsewhere in sub-Saharan Africa) have produced a conversion of small farms into big ones and small farmers into tenants (usually of absentee, often civil-service landlords); displacement of traditional food crops; mechanization and unemployment; and malaria and bilharzia.[53] Some of the dams and irrigation schemes have so reduced the downstream river flow that the fertility of adjacent lands has been destroyed, and thus the livelihood of downstream farmers, who, of course, are uncompensated for their losses.[54]

Irrigated farming projects (to produce cash crops) have been urged as a development strategy in some regions. But experience suggests that these schemes often impose serious risks on the farmer-producers drawn into them. Recent reviews by the World Bank of its "irrigation portfolio" reported that "environmental risks are a frequent problem" (e.g., salinization and waterlogging).[55] Often, too, there are health hazards (bilharzia, malaria). In many of these projects, subsistence peasant families (women and children included) are converted into tenant producers of a state company. The operator determines what crops will be grown, sets quotas, provides supplies and inputs (on credit), allocates water, and manages maintenance and repair of the system. Where producers lack full participation in these kinds of decisions as well as in the management of crop marketing, they are obviously put at risk. The project may even be depicted as a success for the government while producer-tenants are driven into debt and hunger.

IDA financing to support the introduction of plantations is often accompanied by widespread human rights violations. A few years ago, two British MPs (Messrs. Dubs and Moynihan) investigated human rights grievances associated with plantation projects on Mindanao which were financed by the Commonwealth Development Corporation (CDC). Their report presents a shocking record of land-grabbing through recourse to murder and other violence, displacement of peasants and their conversion into landless workers, depletion of local food sources, and corrupt and exploitative employment practices coupled with patently illegal efforts to frustrate formation of unions and collective bargaining in violation of well recognized ILO conventions ratified by the Philippine government.[56] It seems almost incredible that an international agency (CDC) would allow its funds to be used for a project which, at the outset, contained patent risks that these very wrongs would occur. The reason, of course, is clear. The CDC—along with its partners (a TNC and a Philippine state corporation)—failed to assume its legal responsibility to prevent the risks to people inherent in plantation projects; it failed to impose protection of rights and promotion of participation as part of the law of the project; it was a party to a lawless project (e.g., by failing to guard against the risks in the loan and other agreements and by failing to monitor the activity); and to this date, no agency has been held legally accountable to the victims for the dreadful consequences inflicted. The Dubs-Moynihan report, one might add, is simply a meticulously documented history of phenomena which often occur when IDAs promote large-scale agriculture.

Perhaps the CDC, World Bank, and other IDAs are now far more aware of the consequences of high-risk projects of the kind described above. Certainly, as the bank's own publications now reveal, many hard lessons have been taught. The task is to act on these lessons. The following are some suggestive propositions:

1. The full range of harms to people—the social costs—of modernization and large-scale infrastructure projects can never be adequately estimated without first enlisting the meaningful participation of all categories of project-affected people.
2. Unless all of these potential harms and costs are assessed, it is hardly possible to determine whether the project is justified in spite of its cost.
3. Criteria must be developed to determine when such projects are justified; the ultimate determination must entail a legal judgment—based, of course, on a showing that economic and other social evidence support the criteria for justification. Some projects—those which inflict irreparable harms (economic, social, environmental, and cultural) on distinct and large groups of the population should be deemed illegal per se.
4. The burden of justification of all risk-prone projects must always lie with the promoters of the project.
5. Those whose rights are threatened must enjoy full rights—and legal resources—enabling them to dispute the legality of proposed projects.
6. Such projects should never go forward unless and until procedures are put in place which ensure that those threatened with harm will be fairly compensated for all losses, and that those displaced will be resettled in situations which provide new opportunities for sustainable development; resettlement projects must be seen as people-centred development projects, not as dumping grounds.
7. Law must be put in place to secure these kinds of objectives.
8. IDAs must be independently satisfied that these requirements are met; they cannot absolve themselves of that responsibility by delegating it to other agencies.

Some of these propositions are reflected in guidelines recently developed within the World Bank in response to harsh lessons from experience. All of them suggest questions which lawyers must confront if the human rights of the victims of "development" projects are finally to be taken seriously.

Poverty and People-Centred Development Projects: The Need to Promote Rights

Over 15 years ago, Robert MacNamara delivered his stirring Nairobi speech—describing the worsening conditions of the Third World poor and pledging the World Bank's help to relieve them.[57] In 1976, the international community formally endorsed this commitment in the carefully orchestrated, much-publicized resolutions of the ILO-sponsored World Employment Congress, which declared that "meeting the basic needs of the poor" (notably rural poor) should take priority in international development assistance.[58]

Addressing the basic needs of the impoverished rural communities through development projects is no easy task—as a decade of checkered experience now teaches, for performance never reached the levels of rhetoric. In the first place, the social and physical environments of rural poverty vary significantly. They may be characterized by harsh or uncertain climatic conditions, by marginal and fragile soil fertility, by deteriorating environments, by historic lack of infrastructure and services, and by official neglect and disinterest. They are often characterized by social relations which maintain stratification, segmentation, dependency, civic ignorance, and impoverishment—by systems of land tenure, credit, employment, trade, and local politics controlled by some combination of elites or dominant classes.

Thus, the tasks of people-centred rural development are often profoundly difficult. They may focus on finding ways to help smallholders improve production of cash crops; but local agronomy, land tenancy, credit relations, household labour cycles, and staple food production can hardly be ignored. Policy makers may seek to rehabilitate and protect lands from deforestation, overgrazing, or other uses; but the needs of people for food, fuel, and water—and above all the need to enlist full local support for any land-use controls to be put into place—must be addressed. There may be an urgent need to improve local services; but then the problems of creating and maintaining effective local administration and sustainable official commitment regularly become apparent. The introduction of new cash crops may be proposed; but then the land tenure system, problems of credit and indebtedness, gender roles, and community power relations have to be understood. These, of course, are only illustrative examples.[59]

Again, the social environment is often characterized by flawed relationships—and wide gaps—between governments and rural communities. Reports from World Bank assessors and many other reviewers repeatedly document the pathologies which afflict ministries and agencies responsible for delivering services and resources (such as extension, credit, and health care) to the rural poor—pathologies depicted by such terms as neglect, lack of incentives and accountability, indifference to, and sometimes disdain for, people supposed to be served, and ignorance of their society. This is reflected in the alienation of the poor from their government. It is difficult to build people-centred projects on these foundations.

Moreover, these programs can hardly be initiated overnight. It takes years to negotiate, plan, and implement them; and then many more months to evaluate the results, an exercise which becomes arcane if purely economic criteria are used, and more problematic if simplistic social criteria are used. It is doubtful, for example, that the benefits of a project can be sustained unless the intended beneficiaries have not only realized tangible gains, but have somehow become more capacitated to exercise greater power over the future development of their community. But lasting power is never gained unless rights and structures to maintain them are provided. That perspective, unfortunately, was not so readily apparent to the officials in IDAs and governments who were charged in the 1970s—through the ringing rhetoric of resolutions, plans, and speeches—with the job of doing rural development.[60]

Indeed, it seems probable that many of these crucial actors were neither enthusiastic nor well equipped to design projects to meet the basic needs of the rural poor. Most projects proved more difficult than anticipated, all too often they were less then successful, and often they were harmful in their impacts on at least some groups (notably women) in target communities. That is the teaching of a large literature, including the literature of IDAs themselves—especially that of the World Bank, which, on this score, is often rather candid about the results of its labours.[61]

The reasons for failure are, of course, rooted in many systemic problems and practices. But some themes stand out.

Over and over again, we are told—or it is readily apparent from reports—that a project was designed on a flawed and inadequate knowledge base: an inadequate understanding of soil and climate phenomena; or little appreciation of why marginal farmers practised "traditional" methods; or lack of understanding of household farming systems, labour cycles, and gender roles and "rights" in relation to crops; or lack of understanding of local land tenure and power relationships, and of local experience with official (state-regulated) cooperatives; or lack of knowledge of ethnic cleavages, political concerns, or other social phenomena. Often it seems apparent that the poorest farmers did not understand the goals of projects, and that for various reasons (e.g., lack of consultation with and confidence in government officials, fear of losing ground in their crucial struggle to survive), they withheld cooperation from project activities (e.g., by refusing to adopt proposed new crops, inputs, or production methods).[62] Women, as both farmers and providers of essential household services, were regularly ignored, and often excluded from participation in cash-crop schemes, cooperatives, and the planning of community facilities.

The processes of administering projects have regularly been flawed. Administration in Third World countries tends to be centralized, hierarchical, and stratified. Incentives for lower-level people who may perform key functions are often weak, and so are incentives for upper-level staff posted to the more remote countryside. The social gaps which characterize relations between officials and poor people can never be overcome unless structures for imposing accountability exist. And these structures depend, in turn, on local empowerment, which depends on generating knowledge of rights and the experience of exercising them through participation. Unfortunately, the processes for monitoring the programs of projects and regulating or reforming their management have rarely entailed much independent participation from intended beneficiaries; they are governed by regimes of discretion, not law.

These are some of the findings which repeatedly appear. The pathologies revealed combine not only to frustrate the achievement of planned goals, but all too often to inflict harms: skewed distribution of benefits; lack of sustainable services; increased dependence of the rural poor on the state or local elites; cynicism and apathy. Instead of building grassroots democracy—surely a fundamental task in Third World countries—the processes of rural development have often undermined it.

Notable in much of the literature is the absence of efforts to empower meaningful participation at the crucial stages of design and planning by those designated as "targets" or "clients" of proposed development strategies. Rarely does one read a study reflecting any systematic effort by project designers to generate genuine, free, grassroots dialogue and use that dialogue as a means to generate knowledge of the needs, grievances, and proposals of the rural poor—*their* perceptions of what should and can be done. Notable, too, is the absence of much development-focused literature which takes seriously the fact that the rural poor have *rights* to engage—and be engaged—in that kind of dialogue.

Of course, there is no claim here that the rural poor, by dint of experiencing their poverty, know all that needs to be known to define their problems and the solutions to them. Rather, the claim is that the development of full understanding of these problems, and of effective measures to address them, can *only* come through a *sharing of knowledge which generates new knowledge.* That knowledge can be created only through multilateral interactive dialogue among all concerned. Problems must first be conceptualized; there must be a *shared* understanding of the conditions and needs to be addressed. Then the measures adopted must be understood and supported and, indeed, often implemented by those primarily concerned.[63]

Unless rural people are provided with both incentives and means to make changes which *they* identify as necessary, it is doubtful that development projects initiated from the outside can achieve the results desired by the initiators. These lessons, writ large in scores of reports, are hard to learn because the agencies which design and manage projects lack procedures—and law—*mandating* the exercise of rights of self-reliant participation by the rural poor.

Just as the exercise of rights of participation is essential in understanding problems to be addressed, so it is usually essential in all later stages of the project. Once again, evaluation studies and case histories sponsored by IDAs make a compelling case. Thus a World Bank-sponsored study of rural roads projects documents the need for participation not only in planning, but in mobilizing local labour (and technologies), in providing for maintenance, and in providing against risks of displacement or land-grabbing by elites.[64] Strengthening the legal structures that produce participatory projects was the central lesson; but unfortunately, these legal structures are seldom put in place. A number of studies of credit for the rural poor document the need to work through endogenous, self-managed organizations of intended beneficiaries in order to avoid elite domination and to develop understanding and enforcement of rules which will make the project sustainable.[65] The food problems of many agricultural projects (e.g., those which introduce new crops, or affect existing labour cycles) can only be understood and mitigated through participatory research and action. A World Bank report on the need to develop agricultural research for women farmers underscores the need for similar measures.[66] Other studies dealing with problems related to the creation of wells and pumps to provide potable water supplies for poor communities urge the need to develop self-managed community services through participatory processes.[67]

A World Bank study concerned with strategies to confront environmental degradation and desertification in Africa emphasizes the need for a myriad of micro, grassroots projects concerned with both regulating land use and promoting rehabilitation projects. The only viable approach, we are told, is to help communities understand the forces contributing to the degradation and ultimate destruction of environments, and to help them identify steps which can be taken to halt and reverse the processes. In this approach, participatory community structures become the critical agencies to design and implement projects, and empowerment becomes the critical strategy. "Laws concerning social organization should be examined to . . . reduce barriers to the setting up and recognition of *genuine* grassroots organizations empowered to make and enforce rules, raise revenue, [and engage in] collective resource management."[68]

Dr. Michael Cernea of the World Bank has made extensive studies of needs and strategies for participation. With a number of other colleagues, he has reviewed in detail many case histories of projects reflecting a broad spectrum of World Bank activities—e.g., roadbuilding, resettlement, forestry, and aid for small fishermen. He concludes that the only way to make these (and most other) rural development projects successful and sustainable is to "put people first" *in every stage of the project cycle*. That means "empowering people to mobilize their own capacities . . . manage resources, make decisions and *control activities that affect their lives*. What actually happens when people do *not* come first has been shown convincingly by analysis of many development programs."[69] Other World Bank specialists have confirmed this doctrine. Indeed, the problem, we are told, is not whether to promote participation, but how to develop procedural guidelines which can be adapted to different settings in order to produce the elements of community empowerment which bring participation.[70]

International development agencies are usually in a position to promote popular participation. They initiate their own studies and other activities leading to the conceptualization and design of projects. They extend loans through elaborate agreements which may be the product of much negotiation; but local people are never made parties to these negotiations. IDAs often help to design the management of projects and monitor their implementation, and they often conduct their own extensive evaluations; but project-affected people have little input into these processes. The evaluators often expound the rhetoric of participation; but they repeatedly find that projects have been flawed because it was lacking. Participation remains an elusive goal.

This results in tragic failure to calculate all the human costs of projects, to reduce the risks inherent in them, and to compensate victims fully and fairly. Lack of participation also means failure to develop alternative, local self-managed structures as vehicles for administering many kinds of rural development projects; and the absence of these structures prevents effective administration of the project. The economic losses imposed on the poor as a result of denial of rights of participation are often serious enough. Perhaps even more serious, over the long haul, is the continuous fostering of governmental lawlessness and lack of accountability—the undermining of basic conditions necessary to promote understanding, assertion, and exercise of other basic human rights by the rural poor throughout the Third World.[71]

Part 3. Developing Law Governing the Human Rights Obligations of IDAs

Over the past two decades, most IDAs have broadened their official concept of development and their roles in promoting it. Many have recently avowed their intention to address environmental concerns, the needs of women, human rights, and the promotion of local participation. Special offices have been established within IDAs, and experts recruited to promote these objectives.

But experience also suggests that in large "professionalized" (thus compartmentalized) organizations, there are gaps—often big ones—between announced changes in policy and actual changes in performance. Indeed, it is very difficult to formulate internal procedures to implement new goals. Scholars who have studied the problems encountered in attempts to change the orientation and practices of large, multi-purpose IDAs seem to suggest the need to develop three kinds of reform-oriented activities:[72]

1. *education and research*—which must be made relevant to both the avowed new policies and the working processes (and experience) of the various functional units of the agency
2. *new standards, processes, and accountability systems*—new law—governing all stages of project cycles
3. *external pressure* (e.g., from concerned interest groups which can translate their concerns into legitimate grievances, from the media, and from legislative bodies that provide funding) to force the pace of these changes and monitor them.

Education and research. These are interdependent starting points. Experience suggests that, until recently, many IDAs have paid little serious attention to the import and implications of human rights law—particularly to the impact of project activities on the basic rights of people directly affected. IDA lawyers have, apparently, neglected the task of protecting rights through development of agency rules and procedures; so have outside experts and scholars—even many members of the international human rights community. In this context, it is less surprising that project planners, managers, and evaluators have shown so little sensitivity to rights issues, even when these are obviously raised by the reports they prepare.

Today, the leaders of most IDAs would probably recognize—at least at some abstract level—an agency obligation to protect and promote rights. The real task is for agency staff to learn—or be taught—how to translate that obligation into new practices. One obvious way to do this is to review the rights implications of different kinds of projects and programs which typify agency experience. A good place to begin would be to examine those kinds of activities which are more obviously "risk-prone." Just as agency staff who now work on dams or other large-scale infrastructure projects must—as a matter of professional competence—learn about the environmental consequences of such programs, so they *must* get to know enough about human rights law to be able to inform themselves about the rights implications of the physical and social changes which they propose. The World Bank staff studies by Carlos Escudero (dealing with landholders' rights) and Michael Cernea (dealing with the rights of those involuntarily resettled) are illustrations of the kinds of project-oriented human rights knowledge that can be generated within agencies.[73] But other research is urgently needed, notably studies which focus on ways to provide participation and due process at a much earlier point in time in a project cycle, so that before any detailed planning goes forward, the people whose rights are put at risk may challenge the very legality of the proposal in accordance with procedures and standards previously suggested—for they have fundamental rights to do so.

The rights implications of all kinds of projects should be examined. What, for example, are the implications of a project to train community development workers in Honduras? Or to introduce new varieties of rice, requiring more expensive inputs, into a Philippine village? Or to introduce new technologies and new forms of marketing into a small fisherman community? The World Bank's lament that its project planners and managers constantly discriminate against women by ignoring them is a confession that these staff people are *ignorant of their legal obligation* in regard to the *rights* of women, and ignorant of ways to assure promotion as well as protection of these rights.

Standards, processes, and accountability. Studies of the kind suggested make possible a second basic approach: to develop *agency law* (e.g., through external legislation or, probably more important, internal codes governing responsible staff) which spell out the agency's commitment to human rights and establish mandatory standards and procedures to achieve them.

A decade ago, the secretary general of the United Nations suggested that development planners include a human rights "impact analysis" of all projects and programs. The World Bank's recent statement on environmental policies and procedures provides a suggestive, though incomplete, analogue to that approach.[74] In these documents the bank first showed the linkage between environmental protection and sustainable development. It then identified the broad spectrum of harms produced by different kinds of development activities, noting that projects in most sectors have significant environmental implications (a proposition equally valid when applied to human rights). It noted, further, that the damage done by environmental wrongs may not be immediately apparent; planners must focus on long-term, as well as short-term, outcomes.

The statement then lays down principles and guidelines to govern all World Bank project operations at all stages of the project cycle. These require, *inter alia*, country-oriented, sectoral studies of environmental concerns and the development of an "environmental component" for every project. This component must, through appropriate processes, identify and then spell out the steps to be taken to secure rehabilitation as well as protection of environments from the consequences of a wide variety of harmful practices. The development of the environmental component is seen as a continuing process—from the initiation stages to post-audit. A supervisory office (of unspecified strength) is charged with these responsibilities.

A human rights approach follows from the above. Internal agency law must: (1) lay down human rights policies and guidelines, (2) mandate operating principles to apply these standards to the particular exigencies of specific projects, and (3) develop a corpus of "project-specific law" for each undertaking. The task of generating a human rights component to the law governing each project must be seen as a *continuing process*.

The starting point should be the use of participatory, action-oriented research efforts to help mobilize groups of affected people and *generate knowledge of their interests in relation to projects proposed, and knowledge of their rights in relation to those interests*. Reporting on various studies of ways to mobilize rural participation, Mr. Anisur Rahman of the ILO has shown how the creation of this functional kind of legal knowledge within groups can significantly influence the dynamics of their participation. It empowers people psychologically by helping them understand the legitimacy of their role and their claims. It helps them focus on concrete problems and specific, community-based strategies to address them. It enhances group capacity to deal with outside agencies. All of these kinds of changes must happen, and development agencies must promote them, if the process of creating project-specific rights law is to move forward.[75]

Numerous studies, including many important IDA reports, attest to the critical role which appropriate NGOs can play in helping to catalyze grassroots groups, and to centre attention on problems to be addressed and measures to do so.[76] It seems clear, though perhaps quite controversial in some countries, that there must at the outset be recognition of rights of NGOs to operate as catalysts and support and advocacy agencies to help communities—particularly people long excluded from political processes—engage effectively in participation. The rights of these NGOs are an inherent component of rights of community participation. They are guaranteed as a necessary corollary of ILO rural workers conventions guaranteeing rights of association at grassroots levels.

The task of generating authentic, self-reliant participation in the design of projects is, perhaps, the crucial stage of developing a dynamic body of project-specific, human rights law. The World Bank's environmental statement suggests how this law can be formalized: as the project plan takes shape, so, too, will steps to be taken to promote and protect environmental interests. When these measures are understood, the bank will then insist on "covenants" with borrowers as well as other forms of law (administrative rules, legislative changes if necessary) to ensure implementation of measures agreed upon. Ordinarily, all this "law of the project" must be put in place before loan agreements are sent to directors for approval.

Of course, development of these kinds of processes may entail controversial changes in practices long followed by IDAs and governments with which they deal. A policy of informing project-affected people at all stages must replace the tradition of pervasive secrecy. Encouragement of grassroots mobilization must replace repression and manipulation. The role of outside NGOs working with and for the rural poor must be respected rather than suspected. The need to help project-affected people secure legal resources must be appreciated. Access to decision makers must replace exclusion. Conflict must be expected, and negotiation must be the norm. IDAs must play new, proactive roles in promoting these kinds of changes and in making sure that they are confirmed in agreements constituting the law of the project.

Further, it should be recognized that additional, stringent requirements must be established to govern "high-risk" projects, notably those which will cause widespread displacement or other foreseeable damage to many people. The issues to be confronted here have already been suggested. Certainly, no project of this sort should ever go forward until the full range of human costs—the damages—have been calculated and measures adopted to ensure full and prompt compensation. But experience suggests that where projects are fraught with these risks, it may be impossible to secure adequate redress to victims. A heavy burden should lie with the promoters of such undertakings. IDAs have the legal—as well as moral—obligation to judge for themselves (but with the full participation of endangered people, and NGOs supporting them) when the price of "progress" is too high.

Obligations to protect and promote rights are non-delegable. IDAs cannot be absolved simply by asking for promises from other project participants—whether they be official agencies of host governments or private actors such as corporations that participate in agricultural modernization projects. The operations of these agencies must be continuously monitored to ensure compliance with stipulated rights requirements.

Finally, structures must be put in place to secure accountability to agency law. Perhaps a proactive "human rights ombudsman" (who might well be a woman!) should be established. Perhaps agencies should reconsider their immunity—and that of responsible officials—from tort liability to the victims of rights abuses caused in part by agency neglect. Perhaps penalties of various sorts should be made explicit. As one scholar of the pathologies of large-scale aid organizations has put it: "an agency's accountability system shapes the incentives and penalties facing staff members responsible for the implementation of [new] development policies."[77] Developing accountability is of the essence.

External pressure. The "incentives" for new obligations and policies can obviously be sharpened if concerned groups—and their surrogates—are able to play a more vigorous role in monitoring agency activities.

Until recently, very few NGOs had been positioned to play these roles. But the environmental crises precipitated by a number of large projects have led to the mobilization of a number of international NGOs and to vigorous activities on their part. They have publicized grievances, lobbied the World Bank and brought pressure on legislative bodies which vote its appropriations. They have been effective, perhaps indispensable vehicles to force reforms.

Human rights NGOs are now beginning to play similar roles.[78] Thus far, because their concerns have been less understood and their voices weak, they have exerted too little influence. But it seems clear that the potential role of NGOs and human rights activists is significant; it deserves encouragement from foundations and, indeed, from IDAs themselves.

Part 4. The Human Rights Obligations of IDAs and the Problem of Political Interference in the Affairs of States

The obligations described above mean that, in projects which affect people, IDAs must insist (through negotiation of covenants and other law governing the projects) that processes be put in place to encourage authentic participation through autonomous collective action by project-affected people; that rules be established to ensure the flow of information to them, and the generation within groups of a functional knowledge of their rights in relation to interests which may be affected; that claims and grievances be fairly heard by rights-sensitive arbiters enjoined to be fair; that protections against risks to basic interests be established; that there be timely redress for harms done; and that accountability be imposed (by an appropriate arbiter) on all officials responsible for ensuring adherence to these standards and processes. The involvement of NGOs, both of the grassroots and of the "support" and "social action" varieties, should be seen as essential in projects where interests may be affected—notably to promote and protect rights of women. NGOs must be encouraged to develop legal resources: how else can affected interests be protected? They must participate in the creation of law for the project, and then in the processes of enforcing it.[79]

Of course, the human rights law established for projects may vary considerably in scope and intensity, depending on the purposes of the undertaking, the groups and interests directly affected, and the scale of activities envisioned. Again, the involvement of NGOs in examining these problems seems essential.

In most Third World countries, these prescriptions may be viewed by power-wielders as hostile invasions of their "sovereignty." And in many countries, this approach may be seen as plainly subversive—threatening well-established systems of law and administration grounded in deeply entrenched norms of official behaviour which hold that government information is government property, that participation must be managed when sanctioned, that autonomous NGOs are suspect if not illegal, and that group activities must be licensed and made subject to restraints so vaguely defined as to repose unlimited discretion in officials responsible for security and governance. In these systems, official accountability runs not to people, nor to a body of autonomous administrative law incorporating rights, but to the discretion of superior officials in the hierarchy of command.

Further, even if the prescriptions proposed here were acceptable in official circles, it may be difficult to realize them in some, perhaps many, contexts. Among poor people, official law is often conceived as an extension of an official's power—the means he uses to articulate and justify commands and sanctions. The notion that people can use law to assert *their* claims and impose accountability on officials—the notion that law empowers people—may seem contradictory to all common experience. Where rights have seldom been taken seriously and popular understanding is lacking, there is usually a widespread aversion to recourse to law.

Precisely because the *exercise* of rights has to do with stimulating popular action and redistributing power, and with disturbing patterns of behaviour thought to be rooted in "culture," attempts to bring such rights into the processes of development may be vigorously resisted in development circles, and denounced by governments as "illegal." Presumably, too, IDAs, like the United Nations itself, are constrained by the UN Charter (art. 46), as well as by other precepts of international law, from intervening "in matters which are essentially within the domestic jurisdiction" of states. The World Bank Charter is even more pointed: article IV, section 10, declares that the bank "shall not interfere in the political affairs of any member"; and "only economic considerations shall be relevant to its decisions."

A focus on article IV(10), and the question whether it negates the essential argument offered in this paper and enjoins the prescriptions urged, may provide an appropriate vehicle to analyze the political interference problem. The World Bank is the wealthiest and most influential IDA. Article IV(10) of its charter must, indeed, be properly interpreted to resolve the issues posed here; and its distinguished vice president and general counsel seems to be telling us—albeit unofficially—that IV(10) prohibits the bank from using its lending powers to require borrowers to protect and promote political and civil rights in relation to projects.[80]

Is this the "law" which should govern the bank? A number of arguments weigh against that unhappy, perhaps overly rigid, hence unrealistic, conclusion.

Historical Perspectives

We must remember that when its charter was written, and the bank was created in 1945, the dominant concern was to deal with the devastation of the Second World War. The relevant clause, which is now IV(10), was drafted to assure the Soviet Union and other socialist states that the bank would not meddle with their political systems. That pledge remains binding today in respect to all member governments.

When IV(10) was written, the bank's role in Asia and Africa, even in Latin America, was dimly perceived at best. The Third World had hardly come into political existence. The concept of a "development project" and the bank's role in relation to projects was quite differently conceived, because its task was to revive "developed" economies, not minister to "undeveloped" ones in very different settings.[81]

When IV(10) was drafted, the United Nations was more an aspiration than a reality. There was no body of international human rights law, no corpus of "universal" rights. The charter obligations of UN members to promote, collectively, human rights were inchoate. The questions which trouble us here—whether and how international development assistance should be linked to human rights—were never envisioned. Thus it can hardly be said that IV(10) was written to resolve them. Rather, that language—just like other provisions of the bank's charter—should be interpreted to make sense today in the light of four decades of subsequent history, which have witnessed the emergence of a very different proactive bank operating in a very different international legal order for very different purposes, and in very different ways.

Particularly during the past two decades, the bank's perception of its role in promoting development and its concept of a development project have expanded significantly. In the 1960s, the bank emphasized growth-oriented projects and often pressured Third World governments to establish autonomous state corporations in order to "de-politicize" its projects.[82] In 1973, Robert McNamara's famous above-noted Nairobi address signalled a significant change—from "growth" to "distribution" and "redistribution." He talked about the need for both IDAs and Third World governments to reorient their development policies to conform to new bank priorities. He talked about the imperative of land reform in some countries—reminding his audience that "land reform is not exclusively about land; it is about the uses and abuses of power, and the social structures through which it is exercised." He talked about new forms of project administration to make credit, services, and water available to small farmers. He talked about the need for popular participation, local leadership, and decentralization. He reminded his intended audience—Third World governments—that realization of these very new objectives would require new policies and "courageous political leadership."[83]

McNamara's policies were certainly *not* initiated by Third World governments, nor by the bank's operational staff. Rather, they were pressed upon both.

In the 1970s, the bank became proactive in conceptualizing and initiating rural development and other poverty-oriented projects; its rhetoric—if not its performance—anticipated and legitimized the "basic needs" approach to development. The bank also began making elaborate studies of country economies, using this exercise to engage in continuing dialogues with national policy makers. It undertook extensive lending for "social overhead" projects concerned with rural education, health, and population controls. It designed complex "integrated development" and "area" projects. It published"policy papers which were concerned with rural development, land reform, health, and other sectors, and which were quite candid in recognizing that many of the problems to be addressed had more to do with politics rather than economics.[84]

Indeed, the business of designing and negotiating poverty-oriented development projects was often heavily charged with politics. One field of controversy was the definition of project goals. Another was the determination of the appropriate organizational form and powers of the agency (or agencies) in the recipient country which would actually administer the project and spend the bank's loan; the bank was often aggressive in demanding loan agreements that satisfied its aspirations.

In the 1980s, the World Bank has continued to play a proactive role in defining the ends and means of its lending. Its much-discussed 1981 report on Sub-Saharan Africa, in effect, prescribed a package of reforms (presumably as a precondition for sustained bank help in the future) which had direct and controversial political implications.[85] It has also played a much more active role in helping—indeed pressing—countries to deal with debt crises and IMF conditions by "restructuring" their economies—an exercise which is profoundly political. More recently, the bank's environmental policy statements have made it clear (at least in theory) that projects must meet more rigorously defined standards and adhere to bank-prescribed standards and processes. A number of other bank statements have also made clear an aspiration to promote participation—notably of women in projects. Further, its guidelines designed to protect the interests of project-affected people who are evicted from their lands and involuntarily resettled, reflect a recognition that the bank cannot ignore the more obvious human rights implications of its "risk-prone" projects.

The rise of an international corpus of "universal" human rights law paralleled the bank's evolution in the 1970s—and is now conjoined with the very concept of "development." It is worth recalling that the International Bill of Rights came into force only in the latter 1970s as the covenants were ratified, and as other basic instruments (e.g., the 1979 UN Women's Convention) were promulgated. The application of human rights to development processes through various international instruments is an even more recent historical phenomenon—a contemporary happening. But there is surely now an international consensus that rights must be seen as means as well as ends of development. And that consensus is grounded in a body of law which transcends the bank's charter, just as it transcends the law of states.

Lawyers in IDAs, notably the World Bank, cannot ignore this history—and the forces behind it—when, today, they address questions relating to their agency's legal responsibilities to people whose basic interests are affected by activities that the agency promotes.

Political Perspectives

The World Bank, and all IDAs, violate law when they advertently finance activities, or themselves engage in practices, which violate universally recognized rights. And in the context of projects, rights can only be protected where their exercise is promoted.

Indeed, the UN Charter *obligates* both IDAs and member states to promote these rights which have become well established within the UN system. It is this clear obligation, rather than the feeble processes of UN enforcement machinery, which gives force to human rights law, and legitimizes demands that it be obeyed by governments. No member state can legitimately refuse or avoid this obligation, and it is hardly coercive to insist that the duty be respected.[86]

Thus, while the subject is obviously political, it cannot be said to be unlawful political interference for an IDA to insist, as a condition of a project loan, that project-oriented law be put in place to secure recognized rights of project-affected people. Indeed, it is unlawful to fail to insist on such protections.

Of course, the processes for negotiating components of human rights law governing a project may entail demands for controversial changes in patterns of administrative behaviour. And there may be disagreements among lawyers over particular interpretations and applications of human rights to particular situations, or over the appropriate means of protection. These, like other legal stipulations in loan agreements and covenants, can be matters for negotiation—but always subject to a bottom line: that the IDA's legal arbiters be satisfied, themselves, that rights implicated will be protected by the agreement negotiated.

Economic Perspectives

The World Bank Charter (article IV, section 10) also commands directors and officers to employ "economic considerations" exclusively in making decisions. The clause is obviously a corollary reinforcing the "political interference" injunction. It, too, must be interpreted in light of its original purpose, subsequent historical experience, and relevant legal developments.

The clause was intended to enjoin the use of "non-economic" (e.g., ideological) criteria as grounds to determine eligibility for bank membership or for loans; and presumably, it commands that bank loans be confined to the promotion of economic development. None of these mandates precludes the use of human rights standards in the analysis and structuring of development projects; and both contemporary law and the lessons of experience now require that to be done.

From the 1970s onward, the World Bank has recognized that economic growth and related criteria cannot be the sole test of a project's acceptability. Projects to provide services—including benefits not easily quantifiable for the poor—are presumably legal even where their relation to growth may be problematic. Further, the bank's internal law commands analysis of the social as well as environmental impact and costs of a project to determine acceptability; projects which produce unredressed impoverishment as well as growth are now unacceptable.

Experience has taught that human rights should be factored into "costs" and "social" analyses. The lesson is implicit in the bank's own literature. Thus participation and equity for women have become major, if still unmet, concerns. Plainly, the full social costs of risk-prone projects can never be estimated properly unless rights are used to measure costs: in lawful societies, law is used to quantify damages for wrongs done (including "privileged" wrongs such as expropriations); and the assessment of damages depends on the extent to which rights have been violated, in what ways, and with what consequences. If the World Bank—or any other IDA—could be taken to court to pay damages for the wrongs resulting from failure to protect rights, we can be sure that it would begin to take rights seriously. The reason why

IDAs are not sued is because they are immune. The immunity does not absolve them of legal responsibility; it simply bars a court from imposing it.

Obviously, too, the "economic considerations only" clause was never intended to relieve the bank from accountability to law. No doubt, the drafters of its charter would have readily agreed that no project could be financed, no matter what its contribution to a country's economic growth, if slaves were to be used for the work of the enterprise, or even if labourers were to be worked under conditions which violated existing ILO standards.[87] While economic considerations (now quite liberally defined) have always been used to determine what kinds of projects shall be financed, this can never preclude the use of human rights standards to determine the legality of a particular project's design, how its real costs shall be assessed, and how it shall be administered.

Cultural Perspectives

It has sometimes been argued that the position taken here would mean that IDAs would have to start forcing Western concepts of rights and Western remedial law on non-Western peoples and cultures. Not only would this constitute political interference in a country's affairs; it would produce the anomalous result that rights principles would be invoked to impose unwanted law and alien values and structures. The argument seriously misconceives the role of IDAs and the function and character of international human rights law in relation to development processes.

The central thrust of the "human right to development" is simply that people must be enabled to participate in development decisions which affect their basic interests—their security in land, their habitat and food systems, their access to basic services, their physical and economic well-being, and their culture. Only through full exercise of rights of participation can people protect these interests; and participation enables *them* to identify and claim, in *their* terms, the protections necessary to secure those interests. This *participatory approach* to the identification, assertion, and development of human rights in relation to development processes can hardly be characterized as "cultural imperialism."

On the contrary, it is the *ex parte*, unilateral imposition of development projects, designed and managed by Western elites and bureaucracies—backed up by the full force of the "modern" (but alien, Western) state (with its regime of Western laws and penalties and Western-style security forces)—which constitutes a form of cultural imperialism, as well as a source of dangers inflicted on vulnerable project-affected people. It reflects a species of paternalism and arrogance for elites in charge of planning and administering development projects to say that local "culture" requires the exclusion of project-affected people from decisions which may impact so heavily on their interests.

IDAs can insist on protection of these interests without requiring any importation of particular Western legal forms. What is required are endogenous structures and processes which make effective participation and protection of basic interests possible. The development of these protections must, itself, be a participatory process so that the protections promised can be consonant with local language, culture, and ways of resolving conflict—and thus be effective.

This participatory approach to human rights in development processes enables affected people to determine, themselves, how the broad commands of international human rights law should be interpreted and applied within their social context. It entails a conjuncture of efforts by rights-sensitive officials and the very people whose rights are affected. That is, perhaps, the most significant way that human rights can be brought into a living existence and become "legal resources" for the vast majority of the Third World's poor.

Notes

1. Beginning in the early 1970s, a number of Western governments have declared their intention to impose human rights standards on their international development programs—notably the Netherlands, the United States, and (more recently) Canada and the Scandinavian countries. For a review of these developments, see K. Tomasevski, *Development Aid and Human Rights* (London: Pinter Publishers, 1988).

   Over the past several years, UNICEF has sponsored the drafting of a Convention of the Rights of the Child. A draft convention is now being discussed in various NGO and other forums sponsored by UNICEF. Presumably, one purpose of this effort is to enable UNICEF to use the convention as a framework of law governing its assistance policies and projects. See Tomasevski, *supra*, for details on the human rights position (or absence of position) of various UN agencies.

   A somewhat parallel movement in international NGO circles, to link human rights standards more explicitly to international assistance programs, has evolved over the past decade. These initiatives have emphasized the centrality of human rights in rural development. See, for example, International Commission of Jurists, *Development, Human Rights and the Rule of Law* (New York: Pergamon Press, 1981).

2. The term "development project" is probably a word of art in development circles, but it is difficult to define. A project is an undertaking that has specific objectives and a specific life span; it entails specific sets and sequences of activities; it is often planned to benefit particular groups of people in certain geographic areas, or other identifiable groups, in specific ways. A project may be directed towards development of: *infrastructure* (e.g., roads, dams, power); *services* (e.g., health care, education, agricultural extension, or research); *production and marketing* (e.g., of new crops); or *training* (e.g., administrators and others to carry out the above tasks). Often a single project may entail several of the above and similar objectives. See W.C. Baum and S.M. Tolbert, *Investing in Development: Lessons of World Bank Experience* (Washington, D.C.: Johns Hopkins University Press, 1985).

3. For an extensive historical treatment of the evolution of human rights as a major dimension of international law, see L.B. Sohn and T. Burgenthal, *International Protection of Human Rights* (Indianapolis: Bobbs-Merrill, 1973). See also L.B. Sohn, "The New International Law: Protection of Rights of Individuals Rather Than States," *American University Law Review* 32 (1982).

4. See, e.g., UN Charter, arts. 1, 55, 56.

5. See J. Humphrey, "The International Bill of Rights: Scope and Implementation," *William and Mary Law Review* 17 (1976). In Humphrey's words: "References to human rights run through the Charter like a golden thread." Many of the major UN agencies have themselves become vehicles for promoting human rights conventions or resolutions. On the roles played by the ILO, FAO, WHO, and UNESCO in the drafting of covenants, see P. Alston, "The United Nations' Specialized Agencies and the Implementation of the International Covenant on Economic, Social and Cultural Rights," *Columbia Journal of Transnational Law* 18 (1979). The World Bank was, of course, not created as an institution within the UN system. Its charter pre-dated that of the United Nations; and its history was quite separate from, even if related to, the development of the UN organization. See E.S. Mason and R.E. Asher, *The World Bank since Bretton Woods* (Washington, D.C.: Brookings Institution, 1973). But while the bank may not be obliged to take orders from the UN General Assembly, that hardly ends the matter. The real issue is whether the bank is, *de facto, part of the UN system for the purpose of respecting and protecting human rights deemed basic by*

international law developed within that system—a key issue discussed *infra*, Part 4.

6. UN General Assembly Resolution 217 A(111); UN Doc. A/810 (1948). The quoted language is from the preamble.

7. See art. 2 of the Charter of the Organization of African Unity and the preamble to The African Charter on Human and Peoples' Rights.

8. See, e.g., R.B. Lillich and F.C. Newman, eds., *International Human Rights: Problems of Law and Policy* (Boston: Little, Brown, 1979), pp. 56-57; also T. Szabo, "Historical Foundations of Human Rights and Subsequent Developments," in *The International Dimensions of Human Rights*, vol. 1, edited by K. Vasak (Westport, Conn.: Greenwood Press, 1982).

9. See International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200 (XXI) 21 UN GAOR Supp. No. 16, UN Doc. A/6316 (1966); and International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200 (XXI), 21 UN GAOR Supp. No. 16, UN Doc. A/6316 (1966). These covenants entered into force on January 3, 1976 and March 23, 1976, respectively.

10. By 1985, over 80 countries, from all parts of the world, had ratified both covenants. Together with the Universal Declaration, they are often described as the International Bill of Rights.

11. G.A. Res. 34/180, 34 GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (1979), which entered into force on September 3, 1981. By 1985, over 80 states had ratified the convention on discrimination.

12. ILO Convention No. 141 (Rural Workers' Organizations Convention) adopted at the sixtieth (1975) session of the International Labour Conference. This convention is essentially an extension of Convention No. 87 (Freedom of Association and Protection of the Right to Organize), adopted by the International Labour Conference of 1948. These and other ILO conventions are set forth in K. Tomasevski, ed., *The Right to Food: Guide through Applicable International Law* (Dordrecht: Martinus Nijhoff, 1987), an extremely valuable collection of international instruments relevant not only to the "right to food" but more generally to the role of rights in development.

13. International Labour Organization, *Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment:*

Conclusions of the World Employment Conference of 1976 (Geneva: ILO, 1976).

14. See Report of the World Conference on Agrarian Reform and Rural Development (Rome: FAO, 1979), reprinted in Tomasevski, *supra*, note 12.

15. *Our Common Future: Report of the UN Commission on the International Environment and Development* (New York: Oxford University Press, 1987).

16. Art. 1 of G.A. Res. 32/130, adopted December 16, 1977.

17. G.A. Res. 41/128, adopted December 4, 1986. See especially arts. 1, 2, 6, 8, and 9.

18. See, e.g., arts. 19-22, and 27 of the declaration; arts. 1(1), 8(1), and 13(4) of the UN Covenant on Social, Economic and Cultural Rights; and arts. 1(1), 18, 19, 21, 22, and 27 of the Covenant on Civil and Political Rights. The ILO conventions are cited *supra* at note 12.

19. It is perhaps fair to note that, despite all the rhetoric on participation in development circles, comparatively little attention has been paid to detailed analysis of the many component rights needed to guarantee *meaningful* participation. For a valuable discussion of these problems and of the forms and roles of participation in the context of rural development, see R. Green, "Procedures and Professionalism and/versus Participation and Popular Organizations: Some Problems of Accountability and Community Action," in *Third World Legal Studies 1982: Law in Alternative Strategies of Rural Development* (Windsor, Ont., 1982). See also V.P. Nanda, "Development and Human Rights: The Role of International Law and Organizations," in *Human Rights and Third World Development*, ed. by O.W. Shepherd, Jr. and V.P. Nanda (Westport, Conn.: Greenwood Press, 1985).

20. This is article 3 of the "Programme of Action" adopted by the conference. For full text of the declaration and program approved by the conference, see Tomasevski, *supra*, note 12, at p. 90.

21. The entire text of the 1975 Rural Workers' Convention No. 141, and of Recommendation No. 149 which was adopted (unanimously) to accompany it, is set out in Tomasevski, *supra*, note 12, at pp. 173-80.

22. See Lee Swepston, "Human Rights Complaint Procedures of the International Labor Organization," in *Guide to International*

Human Rights Practice, ed. by H. Hannum (Philadelphia: University of Pennsylvania Press, 1986).

23. See arts. 11-13 of the covenant. For other pertinent international instruments, see Tomasevski, *supra*, note 12.

24. See, e.g., R. Howard, "The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights?: Evidence from Sub-Saharan Africa," *Human Rights Quarterly* 5 (Fall 1983).

25. Cf. H. Shue, *Basic Rights: Subsistence and Affluence in U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980).

26. The above analysis is presented in more detail in C.J. Dias and J.C.N. Paul, "Developing the Human Right to Food as a Legal Resource for the Rural Poor," in *The Right to Food*, ed. by P. Alston and K. Tomasevski (Dordrecht: Martinus-Nijhoff, 1984).

27. See, e.g., S.W. Yudelman, *Hopeful Openings: A Study of Five Women's Development Organizations in Latin America and the Caribbean* (West Hartford, Conn.: Kumarian Press, 1987); and M. Schuler, ed., *Empowerment and the Law: Strategies of the Third World Women* (Washington, D.C.: OEF International, 1986).

28. See, for a brief but instructive history, P. Alston, "Development and the Rule of Law: Prevention vs. Cure as a Human Rights Strategy," in International Commission of Jurists, *supra*, note 1. And see K. Mbaye, "Le droit du développement comme un droit de Homme," *Revue des droits de Homme* 5 (1973).

29. The report of the secretary general was issued under a title containing about 45 words, arranged in a highly problematic syntax, which probably says something about the intellectual rigour of its drafting. Nevertheless (thanks, perhaps, to the way others have summarized it), the report has become a significant foundation for an understanding of the human right to development. See *The International Dimensions of the Right to Development as a Human Right*, UN Doc. E/en 4/1334 (1979).

30. On the politicized history of the evolution of the human right to development within the UN system, see, e.g., R. Rich, "The Right to Development: A Right of Peoples," in *The Rights of Peoples*, ed. by J. Crawford (Oxford: Clarendon Press, 1988).

31. Art. 22, which speaks of the "right of peoples" to "social, economic and cultural development."

32. Part of the difficulty with the human right to development is that some see it as a "new" right—not one clearly rooted in the universal declaration and the covenants, not as a right which has evolved over time from experience and is thus also rooted in a well-established consensus on both content and existence, nor as a right rooted in any basic universal human "interest." See P. Alston, "Conjuring up Human Rights: A Proposal for Quality Control," *American Journal of International Law* 78 (July 1984). There are also valid doubts about fuzzy propositions dealing with the "rights and duties of States," "racism," "colonialism," "threats of war," etc.

33. Art. 2(1). Note the use of the word "subject," *not* "object."

34. See I. Brownlie, "The Rights of Peoples in Modern International Law," in *The Rights of Peoples*, *supra*, note 30, and P. Alston, *supra*, note 32.

35. See R. Rich, *supra*, note 30; also UN Doc. A/C/3/41/SR61 (1986) (assembly discussion).

36. The International Commission of Jurists was active in organizing efforts to bring together NGOs concerned with people-centred development and human rights in development in order to draft a statement on the content of a human right to development to submit to the 1981 Working Group of the UN Commission on Human Rights charged with the task of formulating the right. (See E/CN.4-AC.34/WP 10, November 16, 1981.) This statement was later expanded and adopted by an Asian group of NGO experts and is set out in ICJ's *Newsletter*, No. 11 (October-December 1981) at pp. 56-62.

37. See R. Rich, *supra*, note 30; also P. Alston, "Making Space for New Human Rights: The Case of the Right to Development" *Harvard Human Rights Yearbook* 1 (1988).

38. A vast literature (including material published by IDAs) now exists which documents the harms to people which result from those kinds of development projects which, by their very nature, inevitably affect the interests of discrete groups of people in discrete ways. Only recently have lawyers and legal scholars begun to pay attention to the need to help those whose interests are seriously threatened or harmed by such projects. Human rights law can have no meaningful existence unless the victims of

rights violation can use such law to fight back. Because countless victims of project wrongs are poor, ignorant of law, and often hostile to law and lawyers, they lack "legal resources" (i.e., the capacity to use law) to defend their interests. This may help to explain (but not justify) the relative failure of legal scholars and jurists to participate meaningfully in development projects. These themes are discussed in International Commission of Jurists, *Report of Seminars on Legal Services for the Rural Poor and Disadvantaged Groups in South-East Asia (January 1987) and South Asia (December 1987)* (Geneva: ICJ, 1988). The seminars were devoted to developing strategies to resist those kinds of development projects which impoverish and degrade project-affected peoples.

39. The literature on dams is extensive. See, e.g., E. Goldsmith and N. Hilyard, *The Social and Environmental Effects of Large Dams*, 2 vols. (Waldesbridge, U.K.: Waldesbridge Ecological Centre, 1984, 1986); and C. Alvares and R. Billorey, *Damming the Narmada: India's Greatest Environmental Disaster* (Delphi, 1988). "The World Bank financed nearly $6 billion for hydro projects in 1980-82 and nearly $1 billion for irrigation and drainage in 1982 alone": B. Rich, "Multilateral Development Banks, Environmental Policy and The United States," *Ecology Law Quarterly* 12 (1985) p. 701, note 2. For an inside review of some of the World Bank's experience, see, e.g., G.E. Schuh et al., *Social and Environmental Impacts of Dams* (Washington, D.C.: World Bank Agricultural and Rural Development Department, 1987).

40. For some of the difficulties experienced in involuntary resettlement, see M. Cernea, *Social Issues in Involuntary Resettlement Processes: Policy Guidelines and Operational Procedures in World Bank Financed Projects* (Washington, D.C.: World Bank Technical Paper No. 80, 1988); also C. Escudero, *Involuntary Resettlement in Bank-Assisted Projects: An Introduction to Legal Issues* (World Bank Legal Department, 1988). More generally, see, e.g., A. Hansen and A. Oliver-Smith, eds., *Involuntary Migration and Resettlement* (Boulder, Colo.: Westview Press, 1984); and B. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (New York: Oxford University Press, 1986).

41. ILO Convention 107 of 1957 (ratified by many countries) requires recognition of "the collective right of ownership" of indigenous and other distinct ethnic minorities or peoples to lands which they have traditionally occupied under their own customary law (art. 11) and provides that they "shall not be removed from their habitual territories without their free consent" except for

"reasons relating to . . . national economic development" in which case they must be provided with lands of quality at least equal to that of the lands previously occupied," plus full compensation for "any resulting loss or injury." The ILO is presently redrafting this much-criticized convention to strengthen the rights of indigenous groups to retain possession of traditional lands.

The right of ethnic, religious, and linguistic minorities to enjoy their culture is protected by article 27 of the International Covenant on Civil and Political Rights. By virtue of the history and the pluralistic social context of some countries, some of these groups clearly see their long-occupied, group-held ancestral lands as a basic, integral element of their culture. In the latter convention, see, e.g., S.H. Davis, *Land Rights and Indigenous Peoples: The Role of the Inter-American Commission of Human Rights* (Cambridge, Mass.: Cultural Survival, 1988).

42. R. Ayres, *Banking on the Poor: The World Bank and World Poverty* (Princeton, N.J.: Princeton University Press, 1985), at p. 113. See also P.L. Bennagen "Philippine Cultural Minorities: Victims as Victors," in *Mortgaging the Future: The World Bank and IMF in the Philippines*, ed. by V.R. Vose (Manila: Institute of Philippine Culture, 1982).

43. C.J. Dias and J.C.N. Paul, "Developing Legal Strategies to Help Combat Rural Impoverishment: Using Human Rights and Legal Resources," in *The International Context of Rural Poverty in the Third World*, ed. by D. Dembo et al. (New York, N.Y.: International Center for Law in Development, 1986).

44. There are a number of highly critical reviews of the World Bank's "modernization of agriculture" policies and programs. See, e.g., C. Payer, *The World Bank: A Critical Analysis* (New York: Monthly Review Press, 1982); and S. George, *A Fate Worse Than Debt* (New York: Grove Press, 1988).

45. See C. Hewitt de Alcantara, *Modernizing Mexican Agriculture: Socio-economic Implications of Technological Change, 1940-1970* (1976); also A. Dubs and C. Moynihan, *The CDC and Mindinao: Report to the Parliamentary Human Rights Group* (London, 1983); and W.M. Adams and A.T. Grove, eds., *Irrigation in Tropical Africa: Problems and Problem Solving* (Cambridge: African Studies Centre, 1983). The World Bank claims to have put in place policies and procedures to secure protection for those subjected to risk; the regional development banks have none.

46. See, e.g., R.H. Green, "Law, Tradition, Contract and Impoverishment," unpublished paper on the Sahel prepared for a 1986

workshop on the effects of modernization of agriculture (co-sponsored by ICLD and the University of Windsor Faculty of Law). For some Philippine experience, see H. Umehera, "Green Revolution for Whom?", in *A Second View from the Paddy: More Empirical Studies on Philippine Rice Farming*, ed. by A.J. Ledesama, et al. (Quezon City: Institute of Philippine Culture, 1983).

47. See Green, *supra*; also L.P. Reyes-Makil and P.M. Fermin, *Landless Rural Workers in the Philippines: A Documentary Survey* (Quezon City: Institute of Philippine Culture, 1983).

48. For a review of these problems and some experience, see C. Dias, "Reaping the Whirlwind: Some Third World Perspectives on the Green Revolution and the Seed Revolution," in Dembo et al., *supra*, note 43. For an interesting recognition of these kinds of problems within the context of some major projects, see *Cotton Development Programs in Burkina Faso, Côte d'Ivoire and Togo: A World Bank Evaluation Study* (World Bank Operations Evaluation Department, 1988).

49. See B. Rich, *supra*, note 39, for an excellent survey of the environmental effects of unsustainable projects to promote commercial agriculture, cattle-ranching, chemical-intensive farming, and irrigation. These environmental dangers are now well recognized. On the introduction of new plants and biotechnologies, see the papers by D. Dembo, C. Dias, and W. Morehouse in Dembo, et al., *supra*, note 43, at pp. 70-142.

50. See, e.g., S. Reutlinger, "The Nutritional Impact of Agricultural Projects," in *Food Policy: Integrating Supply, Distribution and Consumption*, ed. by J.P. Gittinger, J. Leslie, and C. Hoisington (World Bank, 1987). The adverse nutritional impact may be particularly severe on those elements of the rural poor who are not benefitted in any way by the modernization project, and on households where women are responsible for food production. See P. Pinstrup-Anderson and P.B.R. Hazell, "The Impact of the Green Revolution and Prospects for the Future," in Gittinger *supra*.

51. See *The World Bank's Support for the Alleviation of Poverty* (World Bank, 1988). This report supplements the bank's *Focus on Poverty* (1983). Both reports reaffirm the bank's commitment to the alleviation of rural poverty. And both repeatedly note the effects of non-participation. But the 1988 report candidly admits: "The evidence to date, however, suggests that [intended] beneficiary participation has played a very limited role in imple-

menting Bank-financed rural development projects and virtually no role in designing projects."

52. *Focus on Poverty: A Report by a Task Force of the World Bank* (1983), at p. 11.

53. B. Beckman, "Public Investment and Agrarian Transformation in Northern Nigeria," in *State Oil and Agriculture in Nigeria*, ed. by M. Watts (Berkeley, Calif.: Institute of International Studies, University of California, 1987).

54. See P.G. Pilon and R.A. Bullock, "Monitoring Land Use Change in the Sokoto-Rima Basin, Nigeria," paper presented at the Annual meeting of Canadian Association of African Studies (Edmonton, 1987).

55. See World Bank Operations Evaluation Department, *Rural Development: World Bank Experience, 1965-86* (World Bank, 1988), at p. 44 (hereinafter OED Rural Development Report).

56. A. Dubs and C. Moynihan, *supra*, note 45. See also C. Espiritu, "Transnational Agriculture and Philippine Agriculture: The Philippine Experience," in Dembo et al., *supra*, note 43.

57. President's Address to the Board of Governors, Nairobi, September 1973 (World Bank, 1973).

58. See ILO report, *supra*, note 13.

59. See OED Rural Development Report, *supra*, note 55; M. Cernea, ed., *Putting People First: Sociological Variables in Rural Development* (New York: Oxford University Press, 1985); G. Hyden, *No Shortcuts to Progress: African Development Management in Perspective* (Berkeley, Calif.: University of California Press, 1983); E.R. Morss and D.D. Gow, eds., *Implementing Rural Development Projects: Lessons from AID and World Bank Experience* (Boulder, Colo.: Westview Press, 1985).

60. See Baum and Tolbert, *supra*, note 2, at pp. 469-71, for a discussion of the World Bank's recently recognized need for "social analysis" of proposed projects. See also Operations Evaluation Department, *Project Performance Results for 1986* (World Bank, 1988), reporting on evaluations of 52 implemented projects; "the relative economic success of these projects does not necessarily mean that they have been successful in reaching target poverty groups" (p. 38).

61. See, e.g., the 1988 World Bank report on poverty, *supra*, note 51, for a summary review of difficulties experienced by projects in various sectors.

62. See, e.g., the case studies reported in Cernea, *supra*, note 59. For poor peoples' perspectives and the types of problems they encounter as project-affected people, see R. Chambers, *Rural Development: Putting the Last First* (New York: Longman, 1984). See also I. Iman, "Peasant Perceptions: Famine," in *People Centered Development: Contributions toward Theory and Planning Frameworks*, ed. by D.C. Korten and R. Klauss (W. Hartford, Conn.: Kumarian Press, 1984).

63. Indigenous knowledge—e.g., of local agronomy, labour requirements, land tenure problems, and other subjects—is often extensive, but it may not be reduced into a systematic form which makes it readily available to outsiders. It must be generated by participatory processes. See, e.g., D.W. Broshenka et al. eds., *Indigenous Knowledge Systems Development* (New York: University Press of America, 1986). Similarly, rural poor people may be able to provide indispensable knowledge of their needs, but that knowledge must be discovered through interaction. See, e.g., Chambers, *supra*, note 62. For some instructive case studies, see World Bank Operations Evaluation Study, *The Aga Khan Rural Support Program: An Evaluation* (World Bank, 1987); and A.O. Hirschman, *Getting Ahead Collectively: Grass Roots Experiences in Latin America* (New York: Pergamon Press, 1984).

64. See C. Cook et al., *Institutional Considerations in Rural Roads Projects* (World Bank Staff Working Paper No. 748, 1985).

65. See, e.g., International Fund for Agricultural Development (IFAD), *The Poor are Bankable: Rural Credit the IFAD Way* (Rome: IFAD, 1988); IFAD, *The Role of Rural Credit Projects in Reaching the Poor* (Rome: IFAD, 1985); D.K. Leonard, "Putting the Farmer in Control: Agricultural Institutions," in *Strategies for African Development*, ed. by R.J. Berg and J.S. Whitaker (Berkeley, Calif.: University of California Press, 1986); S. Dumouchel and N. Thede, *Women, Savings and Credit in the Sahel: Towards Independent Development* (Montreal: Solidarity Canada-Sahel, 1987); J.M. Lieberson, *A Synthesis of AID Experiences: Small Farmer Credit, 1973-1985*, Evaluation Special Study No. 41 (Washington, D.C.: U.S. AID, 1985).

66. See J. Jiggins, *Gender-Related Impacts and the Work of International Agricultural Research Centers* (World Bank, 1986).

67. See, e.g., J. Briscoe and D. deFerranti, *Water for Rural Communities: Helping Poor People Help Themselves* (World Bank, 1988).

68. J. Gorse and D. Steeds, *Desertification in the Sahelian and Sudanian Zone of West Africa* (Washington, D.C.: World Bank Technical Paper No. 61, 1987).

69. Cernea, *supra*, note 59, at p. 13 (emphasis added).

70. S. Paul, *Community Participation in Development Projects: The World Bank Experience* (World Bank Discussion Paper, 1987).

71. For discussion of these empowerment themes from a variety of development perspectives, see J.C.N. Paul and C.J. Dias, "Developing Law and Legal Resources for Alternative People-Centered Development: A Human Rights Approach," in *Die Rolle des Rechts in Entwicklungsprozess*, ed. by B.O. Bryde and H. Kubler (Frankfurt: Alfred Metzner Verlag, 1988).

72. See J. Horberry, "The Accountability of Development Assistance Agencies: The Case of Environmental Policy," *Ecology Law Quarterly* 12 (1985); also E.R. Morss and V.A. Gow, *U.S. Foreign Aid: An Assessment of New and Traditional Strategies* (Washington, D.C.: U.S. AID, 1982).

73. See Escudero, *supra*, note 40; and Cernea, *supra*, note 40.

74. *Environment and Development: Implementing the World Bank's New Policies* (World Bank, 1988).

75. Md. A. Rahman, "The Roles and Significance of Participatory Organizations of the Poor in Alternative Strategies of Development," in *Third World Legal Studies, 1987: The Application of Law and Development Theory—Some Case Studies* (Valparaiso, Ind.: Valparaiso University Law School, 1989).

76. See, e.g., M. Cernea, *Nongovernmental Organizations and Local Development* (World Bank Discussion Paper No. 40, 1988).

77. Horberry, *supra*, note 72, at p. 818.

78. See note 1, *supra*; also C. Dias, "Human Rights and Developmental Assistance: Influencing the Policies of the World Bank and the International Monetary Fund" (ICLD, 1988).

79. For an interesting analysis of this subject by a renowned Indian jurist and legal activist, see U. Baxi, "Law, Struggle and Change

in India: An Agendum for Activists," in Dembo et al., *supra*, note 43.

80. See I.F.I. Shihata, "The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements," *Denver Journal of International Law and Policy* 17 (1988). As I read Dr. Shihata's paper, he does acknowledge the bank's obligation to protect people who are to be evicted and involuntarily resettled by project activities; and he does seem to be saying that the bank should protect and promote social and economic rights through projects. I believe, for reasons hopefully made clear in Part I, that the protection of social and economic rights can *never* be secured without protecting the exercise of political and civil rights, notably rights of participation.

81. Most of the bank's early lending centred on European countries. Its Latin American members pressed for "development" lending, but this was a lesser priority until European recovery proceeded. Mason and Asher, *supra*, note 5.

82. But see Ayres, *supra*, note 42, at pp. 1-4, quoting a well-known excerpt from A.O. Hirschman, *Development Projects Observed* (Washington, D.C.: Brookings Institution, 1967) which questioned the theory that development projects could ever escape "politics," and suggesting the importance of promoting "political accountability" to intended beneficiaries and others affected.

83. President's Address, *supra*, note 57.

84. See, e.g., *Rural Development Sector Policy Paper* (World Bank, 1975). A well-known passage in that paper declared (at p. 21): "In most cases, the poor are found living alongside the prosperous. They sometimes suffer from limited access to natural resources, but, more frequently, they suffer because they have little access to technology and services . . . . In many cases, vested interests operate to ensure not only that the benefits of productive activity are distributed inequitably, but that the poor are denied access to the inputs, services, and organization which would allow them to increase their productivity. Thus, the socio-economic system operating in the rural areas is often hostile to the objectives of rural development, serving to reinforce rural poverty and to frustrate the efforts of the poor to move up."

85. *Accelerated Development in Sub-Saharan Africa: An Agenda for Action* (World Bank, 1981).

86. See O. Schachter, "International Law Implications of U.S. Human Rights Policies," *New York Law School Law Review* 24 (1978).

87. The World Bank Charter implies exactly the contrary (see art. I(iii)).

Canadian Aid and Human Rights: Forging a Link

T.A. Keenleyside

Résumé

Tout d'abord cet article examine le développement au Canada du souci de lier aide au développement et reconnaissance des droits de la personne, tout en indiquant les positions adoptées dans les dix dernières années par divers individus spécialistes des relations internationales, groupes de pression, média et députés. L'approche relativement prudente adoptée jusqu'à maintenant par le gouvernement canadien à ce sujet est ensuite passée en revue. Suit une discussion des arguments en faveur de lier l'aide et les droits de la personne et des problèmes potentiels que cette attitude fait surgir, ce dernier volet suggérant que le Canada doit adopter une politique flexible qui soit attentive aux conditions particulières de chaque État.

Enfin, l'étude présente la vision de l'auteur de ce que devraient être les principes fondamentaux d'une politique de développement orientée sur les droits de la personne au Canada. Les stratégies proposées comportent des mesures punitives dans certains cas, y inclus la cessation ou la dimimution de l'aide et l'élimination de projets particuliers qui pourraient contribuer à la violation des droits de la personne. Cependant, elles comportent aussi des initiatives positives comme l'identification de projets d'aide et de mesures dépassant le cadre traditionnel de l'aide au développement, qui permettraient de favoriser le respect des droits de la personne. Pour terminer, l'auteur suggère que pour opérer un lien aide au développement/droits de la personne qui sont significatif, il faut mettre l'accent, à l'intérieur des

programmes d'aide, sur le soutien aux plus démunis dans les pays en voie de développement qui, en échange, devront opérer certaines réformes dans leurs orientations, et là où le gouvernement sera en train, en partie du moins, de les mettre en application.

Background

The issue of linking development assistance to the human rights performance of recipient states has been a matter of considerable discussion in Canada over the past decade. Prompted perhaps by the initiative of the Carter administration in the United States, which severed assistance to several gross violators of human rights, Canadians with expertise in international relations and development began expressing their support for applying human rights criteria to aid decisions in the late 1970s.

By and large, the proposals they advanced were cast in punitive terms. For instance, in a journal article in 1979, Progressive Conservative Member of Parliament Douglas Roche declared that "The Government of Canada should reduce to a minimum its material assistance to, and symbolic approval of, governments that commit gross violations of human rights," although he recommended that food aid be exempted from this policy.[1] In a 1981 work that surveyed broadly the deficiencies in Canadian development assistance, Robert Carty and Virginia Smith argued that aid should be reserved for "popularly-supported governments that seriously want to eradicate poverty at its roots" and accordingly should be denied to "any underdeveloped country that maintains gross social inequalities or denies fundamental human rights."[2] A similar approach was advocated by M.W. Conley in 1983 when he asserted that Canada should "give priority support to those nations earnestly engaged in eradicating poverty *and* protecting human rights," since development is unlikely to occur in states where "human rights are systematically violated."[3] In the same year, Sheldon E. Gordon criticized Ottawa's timidity in general in dealing with human rights in its bilateral diplomacy and suggested that the Canadian International Development Agency (CIDA) should penalize those regimes which are particularly oppressive and dependent on Canadian aid, citing Haiti, Guyana, and Pakistan in particular.[4]

The year 1983 also saw the release of a study on human rights conditionality and development assistance undertaken for CIDA by Martin Rudner of Carleton University. After carefully weighing the advantages and disadvantages of making a linkage, Rudner proposed "explicitly, coherently and functionally" integrating human rights concerns "within the broader framework of foreign policy" including development assistance.[5]

In one of four detailed country analyses of Canadian aid, undertaken by the North-South Institute and published in 1984, E. Philip English, concluding his assessment of the Canadian program in Haiti, stated that "while the case for aid conditionality is controversial in many countries of the Third World, it would appear to be relatively clear-cut in Haiti, assuming that conditions can be applied with sensitivity." If, he argued, the Haitian government failed to show any progress in reducing corruption, income inequality, and human rights violations, then "the role of foreign aid would demand serious rethinking."[6] In an article in 1985 specifically on the subject of the relationship between human rights and Canadian aid policy, Robert Matthews and Cranford Pratt adumbrated the view that "in cases where it can be clearly demonstrated that human rights are 'grossly and persistently' violated" by a state receiving Canadian aid, "Canada should suspend or terminate all government-to-government assistance," since "under such circumstances, any real or authentic development is unlikely, except possibly where aid is directed through channels open to nongovernmental organizations."[7] Finally, in the same year, Irving Brecher opined that "there has never been a forthright official statement on the promotion of free societies as an objective of development assistance policy." Continuing progress on human rights should, he said, become "a critical factor in determining where Canadian aid goes, on what scale and along which lines."[8]

The concerns of international relations specialists regarding this subject were echoed in the Canadian press. In the 1980s, editorials started to appear advocating the tying of Canadian aid to human rights observance. *The Globe and Mail*, in particular, appealed for "more boldness in External Affairs and CIDA" on this subject, referring in particular to the situations in Guyana, Haiti, Honduras, Pakistan, Sri Lanka, and Uganda.[9]

Thus, by the time that the new Mulroney government released its green paper on Canadian foreign policy in 1985, presenting the issue of an aid-human rights linkage as one of the policy questions with which Ottawa was currently wrestling,[10] discussion of this issue was relatively widespread in informed circles in Canada. The government's paper proved a further fillip to debate, for it led to a review of various aspects of foreign policy by two parliamentary committees, and between 1985 and 1987 numerous Canadian interest groups and individuals made representations before these bodies in favour of an aid-rights linkage.[11]

In fact, however, parliamentary interest in this issue dates back to the 1970s; it was one of the earliest loci of discussion. On numerous occasions in the latter half of the 1970s and early 1980s, members of parliament expressed concern about the effects on the Canadian aid program of human rights violations in specific countries. Between 1974 and 1983, for example, questions were raised about human rights abuses in at least 20 countries, and in 11 cases members linked that issue with Canadian development assistance practices and policies.[12] In March 1977, and again in March 1978, a private member's bill was introduced by Progressive Conservative Member of Parliament David MacDonald, which was designed to prohibit Canada from providing economic assistance, whether in the form of aid, Export Development Corporation credits, or tariff concessions, to any state guilty of consistent and gross violations of human rights.[13] Also, in 1978 the leader of the opposition, Joe Clark, told the House that if his party were in power it would not provide aid to governments guilty of gross violations of human rights.[14]

Several years later the aid-human rights issue was considered by the Parliamentary Sub-Committee on Canada's Relations with Latin America and the Caribbean. In its final report in 1982, the sub-committee stated that "Canadian development assistance should be substantially reduced, terminated, or not commenced in cases where gross and systematic violations of human rights make it impossible to promote the central objective of helping the poor." In other serious but less extreme cases, the sub-committee recommended that development assistance be channelled principally through non-governmental organizations. On a more positive note, the sub-committee recommended that aid recipients that showed an improvement in their respect for human rights should be encouraged through increases in Canadian aid.[15]

In June 1986, these recommendations were endorsed in the report of the Special Joint Committee of Parliament on Canada's International Relations (the Hockin-Simard Report). In addition, reflecting the emerging concern that the government not confine itself simply to punitive measures, the report recommended that it consider establishing an International Institute of Human Rights and Democratic Development to initiate programs that would "contribute to the long-term development of political, civil and cultural rights" just as Canada "now contributes to long-term economic and social development through the aid programme."[16]

Parliamentary consideration of the aid-human rights issue culminated in May 1987, with the release of the report of the House of Commons Standing Committee on External Affairs and International Trade on Canadian aid policies and programs (the Winegard Report). It devoted the most thorough parliamentary attention thus far directed to this subject. The report recommended that Canadian emergency humanitarian aid "continue to be given on compassionate grounds" without human rights preconditions, "but that it be monitored closely to prevent abuses." At the same time, the report proposed the adoption by CIDA of a four-tier country classification grid for Canadian aid recipients that would "provide incentives for good behaviour as well as penalties for poor human rights performance."[17]

In sum, since the late 1970s the pressure has been mounting on the Canadian government from a variety of directions to attach priority to human rights in making development assistance decisions. To date, however, Canadian governments have tended to pursue cautious positions on this question. In 1978, Secretary of State for External Affairs Donald Jamieson advanced what was to be the most frequent official response to demands that the government adopt a more assertive posture, namely, that Canadian aid is "designed to help meet the basic human needs of the poorest people in the poorest countries" and that restrictions because of human rights violations should, therefore, in most instances be avoided. At the same time, however, he did indicate that "human rights considerations are a factor in determining levels of aid and the orientation of programs," and that "on a few occasions when the human-rights situation in a country has deteriorated to a stage where the effective implementation of the aid program is made extremely difficult, Canadian assistance has been suspended or not renewed."[18] The Clark government took a similar position, and in a brief review of foreign aid policy undertaken by CIDA, specific countries were cited where in the past aid had either been suspended or not renewed because of problems of implementation, namely, Equatorial Guinea, Kampuchea, Uganda, and Vietnam.[19]

With the return of the Liberals to power in 1980, this policy was maintained, with El Salvador and Guatemala added in 1981 to the list of states where aid was curtailed because "gross violations of human rights or conditions of conflict" made "the provision of an aid program impossible."[20] During this period, another consideration that could precipitate aid strictures was referred to, namely, the military intervention of a recipient state in the affairs of other countries. In June 1981, the Secretary of State for External Affairs Mark MacGuigan, stated that Canada had "withdrawn aid programs from those countries whose scarce resources are diverted to war and conquest," and the following month he identified Vietnam and Cuba as states where such action had earlier been taken because of their "imperialist adventures."[21]

Thus far during the Mulroney years, rather mixed signals have been emanating from Ottawa regarding aid and human rights. Most statements have indicated essentially a continuation of the past policy—that action should be taken only in extreme cases, principally (although not all statements have been explicit on this point) when there has been such a breakdown in order as to render the continuation of an aid program ineffectual.[22] Only very general statements have been made that might be taken as applying to other less extreme situations—statements to the effect that "the nature and extent of our program is affected by the human rights records of development partners."[23] This relatively restrictive approach has continued to be most frequently justified on the grounds that the principal function of the aid program is to end "the crushing oppression of poverty,"[24] and the victims of oppression should not, therefore, be "doubly penalized by the withdrawal of ODA programmes."[25] Statements to this effect were included in the government's responses to both the Hockin-Simard and Winegard reports in 1986 and 1987 respectively.[26] In the latter instance, too, Ottawa rejected the aid-rights country classification grid that had been proposed by the Standing Committee on External Affairs and International Trade, arguing that judgments would be too subjective and that the approach was essentially punitive. It was also circumspect regarding the proposal in the Winegard Report that all CIDA country program reviews and project approval documents be evaluated from a human rights perspective.[27]

The limited responsiveness of the Mulroney government to those advocating a stronger aid-human rights linkage was also reflected in the government's decisions in 1984 and 1987 to lift the suspensions on bilateral aid to El Salvador and Guatemala respectively. These actions have been widely criticized by individuals and groups familiar with the Central American situation on the grounds that restoration of these programs has signalled that in the Canadian view there has been a significant improvement in their human rights records when, in fact, that has not been the case.[28]

On the other hand, there have also been some signs of a more forthcoming attitude on the part of the Mulroney government. In its response to the Hockin-Simard Report, the government agreed with the special parliamentary committee that "human rights must be given proper weight in Canadian development assistance policy," and it accepted the committee's proposal that an International Institute of Human Rights and Democratic Development be established "which would have as its aim the development and strengthening of democratic institutions and human rights in developing countries."[29] Further, in responding to the Winegard Report, the government indicated that assessing a country's rights record would be a top priority in deciding whether it should be given aid, and accordingly, in the future, CIDA would present to Cabinet information regarding states' human rights policies when proposals to provide assistance are submitted. At the same time, the government committed itself to establishing a unit within CIDA which would "be given responsibility for ensuring that development assistance programs are consistent with Canada's overall foreign policy concern for human rights."[30]

The halting, uncertain, and sometimes inconsistent character of government policy to date on this issue suggests the need for further articulation by interested individuals and groups of the reasons why a more forceful linking of Canadian aid and human rights is desirable. At the same time, however, it is clear that careful consideration must be given to the difficulties that are unquestionably associated with such an approach. A balanced assessment is necessary in order to arrive at a viable scheme for government action in this complex and delicate area. This paper attempts next to set out the arguments in favour of linking Canadian development assistance to human rights, and subsequent to that it considers the potential problems in doing so. Finally, on the basis of these considerations, it proposes tentative guidelines for Canadian government action in the future.[31]

The Case for Linkage

The case for taking the human rights performance of states into account in aid decision making rests in the first instance on the same fundamental argument that can be advanced for a greater preoccupation with human rights in states' foreign policies generally. This is the view that all states have a responsibility to ensure that there is greater respect globally for a range of basic human rights now broadly recognized throughout the international community, as evidenced by the widespread references to such rights in the constitutions of both developed and developing countries and by states' adherence to the United Nations Universal Declaration of Human Rights and such other conventions as the UN covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. While the idea of state sovereignty and non-interference in the internal affairs of other countries has long been an important principle of the international system, the last 40 years have witnessed considerable inroads on the notion of sovereignty, including growing recognition of the obligation of states not only to respect basic human rights within their own jurisdictions but to foster and protect them abroad. Thus, the idea that setting human rights conditions on a country's aid constitutes unwarranted interference in the domestic affairs of recipients and the imposition on them of alien Western values can be rejected on the grounds, as Professor Jack Donelly has put it, that "today there is near universal international agreement, at least in theory, although often not in practice, that certain things simply cannot legitimately be done to human beings,"[32] including such practices as torture, arbitrary arrest and detention, summary execution, and the willful imposition of malnutrition or starvation.

In sum, then, application of human rights criteria to aid can be viewed as an appropriate policy for donor countries since it is one way of demonstrating that they recognize a responsibility to enhance respect for universally cherished human rights without which no individual is able to lead a life of dignity and worth.

Second, it must unfortunately be acknowledged that many of the world's worst human rights offenders are developing countries. Amnesty International's 1987 annual report details human rights violations in 128 countries, 105 of them developing. Thus, if the obligation to make human rights a component of foreign policy is recognized, then inevitably substantial attention must be focused on the human rights situation in developing countries. Further, in the case of Canada, the Canadian aid program is frequently the most important dimension of Canada's relations with such countries, making it the principal potential instrument of influence, however limited Canada's leverage may often be.

Third, using Canadian aid as a means for attempting to improve states' human rights performance has the advantage over many other forms of action of being a flexible device. While such measures as withdrawal of commercial services and export credit facilities and the application of trade and investment sanctions are punitive in nature, use of the aid instrument need not be confined to punishing gross violators by the termination of development assistance; aid can also be employed, if there is sensitivity and imagination on the part of the donor in project selection, in a positive way to advance human rights observance.

A fourth, pragmatic argument is that aid provided to states that abuse basic rights—economic, social, and political—is unlikely in most instances to be effective, in that meaningful development is usually dependent on respect for the individual and his basic rights. Denial of civil and political rights is not only a direct assault on the integrity of human beings, but an "impediment to integral development, because the political participation of individuals and groups" affected by the development process is "restricted." Likewise, "the abuse of economic, social and cultural rights makes the full realization of political and civil rights impossible because the economic and social participation of different social classes is grossly unequal."[33]

Thus, it can be argued that even well-intentioned and appropriate forms of aid will most often fail to reach the needy in developing countries if their regimes are not committed to human rights. Rather, aid is likely to serve to perpetuate the status of the existing elites and to facilitate their repression of the impoverished majority. Forging a linkage between aid and human rights is, then, a way of ensuring that Canadian aid fulfills its stated principal objective of benefitting materially the least privileged in developing countries and that it does so in an equitable, non-discriminatory fashion.

Fifth, and related to the above, in most instances it is probably in Canada's enlightened national interest to take human rights into account in shaping its development assistance policy. Ottawa has sometimes argued against a greater focus on human rights in aid policy on the grounds that that would make Canadian assistance a "hostage to only one factor" and might conflict with the realization of other interests, principally of a security and commerical nature.[34] The centrality of strategic/security considerations in the shaping of Canadian foreign policy must be acknowledged, but by and large Canada's interests in this respect are best served by policies—including those in the development field—that encourage the observance of political, economic, social, and cultural rights, and that thereby enhance stability in developing countries. The end result of repression is often civil unrest and revolution that may be damaging to global security and thus also to Canadian strategic interests, especially if the result is that politically "friendly" but authoritarian regimes are overthrown. Likewise, stable Third World states that have achieved relatively egalitarian development will in the long-run make better trade and investment partners for Canada than countries where persisting human rights violations serve to perpetuate underdevelopment, inequality, and a concomitant climate of political uncertainty. Further, there is strong evidence indicating that aid is in any event an impractical and costly instrument through which to attempt to obtain direct trade and investment benefits for Canada. To argue in favour of taking human rights into account in the Canadian aid program is, then, not to discount the inevitability of Canada, like other countries, acting on the basis of national interest, but rather to suggest that in most instances it is likely to be in Canada's enlightened interest to pursue such an approach.

Sixth, the argument can be advanced that to link aid and human rights is appropriate because it is in accord with the concerns of the Canadian public. In his report for CIDA, Professor Rudner reminded the agency that "those groups in Canadian society that are most pronounced in their support for international development co-operation are also those which place high value on human rights."[35] It is thus astute for the government to have regard for human rights considerations in order to preserve a constituency supportive of the agency's endeavours. Others have advanced this societal factor somewhat differently, asserting that basic rights must be taken into account because they reflect values central to the Canadian community and, neglected outside Canada in the making of Canadian foreign policy, they may in time atrophy internally.[36] Put yet another way, it can be asserted that basic Canadian values constitute a component of the national interest, so that if Canadians aspire to a foreign policy which gives expression to global, humanitarian goals, then they require a place in its foreign policy.[37]

Finally, and perhaps most importantly, to link Canadian aid to human rights considerations is appropriate since these two aspects of policy are inherently related. As Bernard Wood, the former director of the North-South Institute, put it in 1985, "all aid is or should be about human rights" since "it is supposedly an instrument for the promotion of economic and social rights and the basic standards of a minimum decent existence for those who do not have access to them."[38] A similar position was advanced in the Winegard Report when it emphasized that "human rights must be seen as an integral part of development not as a factor separate from or incidental to the basic needs of the poor."[39] On some occasions, this intrinsic relationship between development in the Third World and human rights has been acknowledged by Canadian officials, as they have sometimes perceived the development process in the context of the advancement of the whole person, embracing his or her economic, social, and, indeed, political well-being. In 1976, for instance, Paul Gérin-Lajoie, then president of CIDA, wrote that the focus of government activity should be the human person and the objective the freeing of human beings not only from hunger, disease, illiteracy, and unemployment, but also from the use of force to silence dissent, and from political imprisonment, and torture.[40] Concurring with the government at its eloquent best, it is only right that Canada's human rights concerns should find expression in its development policies, for the fundamental objective of Canadian aid is or should be improving the human condition in all its aspects.

Some Cautionary Observations

Having argued the value of forging a link between Canadian aid and human rights, it is important at the same time to stress the need for care, sensitivity, and suppleness in devising a strategy. The efficacy of Canadian action is one consideration that must be borne in mind.

Although a case can be made, in instances of gross and persistent human rights violations, for severing Canadian assistance even if such action does not affect the behavior of the recipient (on the grounds that it is important to avoid any appearance of complicity in the repression of such regimes), by and large it is desirable that Canada structure its actions in a manner likely to achieve effective results. This means that comprehensive, punitive measures should be reserved for the worst cases where abuses are so widespread as to render development efforts embracing the most disadvantaged largely impossible. Serious human rights abuses are present in a large number of states receiving Canadian aid; a general (as opposed to a selective) curtailment of aid to such states would, accordingly, mean a dismantling of much of the

Canadian bilateral program. Practicality thus dictates that the punitive dimension of Canada's aid-rights strategy be concentrated on broadly recognized gross offenders.

It must also be recognized that the ability of Canada acting on its own to influence human rights behavior via its aid program is limited given that rarely, if ever, is aid from Canada critical to the recipient. This suggests the wisdom of Canada acting in concert with other states wherever possible (although unilateral action should not be discounted, since carefully considered Canadian initiatives may induce like responses from other states or on their own achieve at least modest results). Acting collectively, especially in a punitive context, requires, of course, broad agreement on the severity of the situation in different countries, and that in turn necessitates a consensus on what constitutes the most fundamental rights, the violation of which cannot be countenanced under any circumstances. Unfortunately, the sections of the two recent parliamentary committee reports dealing with aid and human rights as well as the government's responses to them did not tackle squarely this problem of defining the types of violations that would justify aid termination. Efficacy, however, points to the importance of doing so in order to facilitate collective action.

Critics of economic sanctions in general, of course, argue that even multilateral action is unlikely to be effective. The historical record points to the frequent inefficacy of sanctions due to the capacity of states to evade and/or adapt to the situation and the absence of the necessary will on the part of the sanctioning powers to sustain their pressure over the long-term. Critics also argue that the outcome of sanctions is uncertain. The result might be to harden the resistance of a regime to change and provoke harsher treatment of its citizenry, especially, it is argued, if one is dealing with a psychopathic leader. Further, they hold that once sanctions are imposed, if they do not lead to the desired result, the opportunity thereafter to influence behavior is lost.[41] Again, these problems must be acknowledged. They point to the need for caution in linking aid to human rights if the outcome sought is a positive improvement in the situation. It is important, for instance, to evaluate in each case the likely effects of any course of action taken on the behaviour of the regime. When punitive action is contemplated, a phased withdrawal would also seem preferable to abrupt termination in order to maintain leverage for a period of time. Further, the problems associated with sanctions point to the desirability of concentrating as far as possible on constructive initiatives that encourage human rights observance rather than on the complete denial of aid to offenders, recognizing that the grossest violators may be the most impervious to pressure and that supportive measures are probably more likely to produce the desired results.

Thus, action taken by Canada need not always constitute a form of sanction. Nor, therefore, need effectiveness be measured, as is so often the case with sanctions, in terms of whether or not a major transformation in state behaviour is accomplished. If, through gradual restructuring of the aid program in various countries, one is able to induce even limited improvements in human rights observance by long-term efforts at encouraging change, then the effort can be deemed worthwhile. Finally, all of the above considerations related to efficacy indicate the importance of adopting a flexible rather than a mechanistic strategy that is responsive to the particular circumstances of each country, whether punitive or positive action is being contemplated.

In addition to the question of efficacy, there is the problem of ensuring that there is consistency in Canada's approach to linking aid and human rights. Certainly, past Canadian action of a punitive nature has been highly selective. Canada has curtailed aid in countries where it has not had significant strategic and commercial interests nor a sizeable aid program—Uganda, Equatorial Guinea, El Salvador, Guatemala, and Suriname, for example—while avoiding action in other situations—Indonesia, Bangladesh, and Pakistan—where rights violations are also serious, apparently because Canadian political/security, commercial, and development interests are substantial. The degree of media attention to particular countries and related public attitudes in Canada have also affected government responses. Thus, in recent years Canada has focused on the human rights situation in Central America and Haiti, which have been extensively covered in the media and on which non-governmental organizations in Canada have been active in lobbying officials for action. By contrast, the plight of human rights victims in Zaire, one of the world's worst violators and a state that is a major recipient of Canadian aid, does not seem to have figured in Canadian policy, presumably because of the absence of public attention to this particular problem. Inconsistency has also been apparent in the past in the way in which the professed policy of not aiding states that have intervened militarily in the affairs of other countries has been applied. Canadian aid to such communist states as Vietnam and Cuba was terminated because of their interventions in Kampuchea and Angola respectively, but no similar action was taken against such pro-Western states as Indonesia and Honduras despite the former's invasion and occupation of East Timor, resulting in the deaths of approximately one-third of the population, and the latter's role as a base for the covert war against Nicaragua waged by the anti-Sandinista contras. Such inconsistencies in the use of aid to censure states can only be eliminated by reaching a consensus on what constitutes the most basic human rights that must be protected and then, as the Winegard Report recommended, using "verifiable reports of [such] violations, not ideology or strategic interest" as the "basis for unfavourable assessments of human rights observance."[42]

Consistency also requires recognizing the interrelatedness of the whole panoply of human rights—civil, political, economic, and social—and the importance of progress in any one area for advances in all others. Thus, while a Canadian strategy of terminating bilateral aid only in extreme cases for violations of certain fundamental rights seems appropriate, Canada's approach should not ignore serious human rights violations elsewhere nor of any kind. However, the most appropriate response in these other situations is likely to be different with the emphasis not on general curtailment, but on selective reshaping of Canadian aid.

The problem of consistency is further complicated by the fact that it can reasonably be argued that the nature of Canada's response *should* vary from state to state in that countries are at different stages in their respect for human rights and Canada's expectations may, therefore, legitimately vary from country to country. In general, for example, the level of human rights observance is much higher in the Commonwealth Caribbean than in Central America; a realistic policy must take that into account and shape Canada's responses differently in different situations in a fashion that reflects an awareness of each country's past and its current stage of political and social evolution.

Once again, the above considerations reflect the importance of adopting a strategy which, while consistent, does not insist upon conformity, and which is flexible enough to enable varying forms of responses depending upon the circumstances of each state.

Another dimension of the problem of inconsistency is the risk of Canada's being accused of having a double standard if it uses the aid program to influence the human rights behaviour of developing countries, but fails to take other forms of action with states—developed and developing alike—that are equally guilty of human rights transgressions but where the aid instrument is not available. Indeed, reliance exclusively on aid as a tool could be seen as a form of racial discrimination, with Canada treating human rights violations more harshly in non-white developing countries than elsewhere.[43] To deal with this problem, an appropriate Canadian strategy would have to embrace alternative measures in the cases of non-aid recipients equally guilty of human rights violations.

A further concern that must be addressed is the argument most frequently raised by the government against aid restrictions except in extreme circumstances, and that is the effect of strictures on Canada's meeting the needs of the poorest segments of the population in developing countries, the alleged central focus of Canadian aid. As indicated previously, Ottawa has frequently asserted that to curtail aid going to those who are already suffering under repression is to punish them a second time for the transgressions of their governments. This line of argument suggests the appropriateness of an aid-rights strategy that opts for initiatives other than the total termination of development assistance so long as Canadian aid is, in fact, truly meeting the needs of the poorest in developing countries.

The same can be said for the final cautionary observation about linking aid and human rights. In an article in 1984, Martin Rudner noted that increasingly there are calls for use of the aid program as a political instrument to achieve a range of Canadian policy goals, of which a higher level of human rights observance is only one. "Such demands," he argued, "for a more politicized approach would treat development assistance expressly as an instrument for the promotion of politically determined objectives, and reinforce the movement away from the earlier poverty-focused strategy."[44] This perception of Canadian aid was apparent in the Mulroney government's 1985 green paper on foreign policy. In the section on "International Development Cooperation," the government stated that Canadian appreciation of its interests at stake in the Third World had "deepened and become more sophisticated. Trade and investment, immigration, environmental conservation and international peace and security have been added to our original, largely humanitarian objectives."[45]

Seeing human rights promotion as simply one more dimension of a general broadening of the acceptable objectives of the Canadian aid program is hardly a perspective compatible with the thinking and concerns of most human rights advocates. It is not the intention to create a situation where human rights concerns are, in effect, competing with commercial, strategic, and other considerations for a little piece of the Canadian aid pie. Rather, it is a question of advocating a return to a poverty-focused program, recognizing that an aid effort that concentrates on all aspects of the human development of the most disadvantaged is at the same time a program rooted in human rights promotion. This should constitute a fundamental premise in developing Canada's aid-human rights strategy for the future.

Basic Elements of a Canadian Human Rights-Development Policy

Taking the above considerations into account, the following is an outline of what, it is suggested, ought to constitute the basic components of a Canadian policy linking aid and human rights. These elements include measures that are both punitive and positive in character.

a) *The Punitive Dimensions:*

1) In instances where there has been a pattern of gross and persistent violations of the most fundamental, internationally recognized subsistence and security rights and where the degree of repression is such that there is no capacity for Canada to alleviate the suffering of the most disadvantaged citizens through carefully selected aid instruments, then Canada should undertake a phased withdrawal of Canadian aid.

Subsistence and security rights are those "first-priority needs," "without which existence is either not possible or unbearable,"[46] and the related violations include: arbitrary deprivation of life, whether by summary execution or deliberate denial of food and medical attention; torture or other forms of cruel, inhumane, and degrading treatment; forced migration; and arbitrary arrest and protracted detention without trial. This is not to denigrate the importance of Canadian policy taking account of other rights, but, as argued above, it is important for reasons of efficacy to focus action that is disciplinary in nature on a limited number of states where there is the widest possible consensus on the severity of their violations. The offences enumerated here are deemed to be ones which cannot be countenanced under any circumstances in any states. For example, under conditions of international or civil war, there may be grounds for the abridgment of certain basic political and civil rights and freedoms, as provided for even under Canadian law, but not for these subsistence and security rights (except, perhaps for limited periods, the last one enumerated). Thus, a distinction is suggested even in Canadian values between subsistence and security rights and other basic rights that should legitimately find expression in Canadian aid policy.

The notion of a phased withdrawal is advanced because the graduated application of pressure provides time for a government to alter its behaviour, preserves Canadian leverage over the offending regime for a period, and allows for the application of diplomatic persuasion in conjunction with the withdrawal. The phases might include an initial warning of the intention to curtail aid, the elimination of capital aid projects, suspension of other forms of government-to-government assistance, and finally the elimination of humanitarian assistance via non-governmental organizations (NGOs).

2) Where gross and persistent violations of subsistence and security rights exist, but where there remains some capacity to meet the basic needs of the citizenry through the provision of food, medical care, clothing, housing, and education, aid should be confined to these forms. In particular, government-to-government aid by way of capital projects, line of credit, etc., where the neediest are not the direct targets of the aid, should be gradually eliminated. Admittedly, even

under very repressive circumstances some such aid may be of indirect, long-term benefit to the most disadvantaged, yet still it should not be continued because Canada must avoid giving legitimacy to such regimes and helping thereby to sustain them in power. Further, given that aid resources are scarce and legitimate needs everywhere cannot as a result be met, it makes practical sense to redirect bilateral aid to states whose respect for human rights enhances the prospects of Canada's contribution to their development yielding tangible results. Thus, where there are serious violations of subsistence and security rights, only that aid which helps directly to sustain the disadvantaged majority of the population, so that it may struggle against the government for a lifting of its repressive measures, should be offered. In these situations, it is preferable to rely on such vehicles as NGOs and mission-administered funds in order as far as possible to bypass the offending governments in delivering aid to the neediest, including the most affected victims of repression.

Where humanitarian assistance is still provided despite the presence of gross violation of security and subsistence rights, careful monitoring of the aid will be required to ensure that it is reaching its intended targets, yet not to provide such aid where the opportunity still exists would be incompatible with the notion that the first responsibility of a government with a human rights-oriented aid program is to meet basic needs.

3) In countries where there is a pattern of gross and persistent violations of subsistence and security rights but no Canadian aid program exists, other forms of public sector involvement with such regimes should be terminated. This should constitute an element of Canada's human rights policy, since, as indicated earlier, it is important that Canada's approach be even-handed. Accordingly, efforts should not be confined exclusively to gross violators that are aid recipients. Restricting the discussion to developing countries, a good example of the type of measure that might be taken is the withdrawal of Export Development Corporation (EDC) credits and insurance, facilities which are related to the aid program, but bear little direct relationship to meeting basic needs in developing countries.

The withdrawal of EDC services is a measure that should be taken in the early stages of phasing out public sector involvement with states that are beneficiaries of Canadian aid as well. To date, Canada's neglect of non-aid forms of public sector involvement with repressive regimes has had the effect of conveying to them mixed and confused signals about the seriousness of Canada's concern regarding their human rights record. The case of Chile is illustrative. Following the 1973 coup which toppled the democratically-elected Allende government, replacing it with the repressive Pinochet regime which has since been responsible for a wide range of violations of security, political, and civil rights, Canada quietly ended its very limited program of government-to-government assistance. Canadian aid was, however, too inconsequential for its withdrawal to have any impact. Had Canada really wished to take action signifying its displeasure at Chilean repression, additional measures were called for, including the termination of EDC activity. Yet, no such action was taken. Indeed, EDC involvement in Chile actually increased after 1973, with Canadian concessional loans to Chile over the period 1974–1986 amounting to $89.5 million and insurance to exporters $109.3 million. Even at a time when government sensitivity to human rights questions appears to be increasing, there has been no reversal of this position, for in 1986 EDC loans and insurance to Chile amounted to $28.5 million and $29.9 million respectively.[47] Clearly, to ensure that there is consistency in its approach, there is a need for government attention to non-aid forms of public sector involvement with repressive states both where there are and are not Canadian bilateral assistance programs.

4) In *all* other countries where Canada has an aid program, all existing and new projects should, in effect, be put through a human rights filter by a unit within CIDA charged with monitoring programs and projects from a human rights perspective. One central purpose of this monitoring would be to ensure that specific projects which have been contributing to or may in the future foster human rights violations in recipient countries are phased out or not initiated. In particular, this would include projects that are overtly discriminatory in nature as part of a government design to advance the interests of certain sectors of society at the expense of others on such grounds as sex, religion, language, ethnicity, or tribe, and projects that detrimentally affect segments of the population without their having participated in the decision making leading to the project.

For reasons stated earlier, especially the need for consistency, Canada's aid-rights policy should not ignore serious cases of human rights violations anywhere or of any kind. Indeed, an exclusive focus on only the worst cases of abuses of security and subsistence rights might render Canada's efforts largely useless, since they would be concentrated on those states most impervious to external influence, while failing to help check abuses in other states before they become excessive. Further, such a restricted approach would ignore the interrelatedness of the whole panoply of basic rights and hence the need for simultaneous progress in the areas of security, subsistence, civil, political, economic, and social rights for those in any one area to be secure.

There have been some instances in which specific Canadian projects have been terminated or suspended because of their perceived connection with human rights violations. In November 1980, for example, newsprint was removed from the list of commodities eligible for purchase under a line of credit to Guyana when it became clear that newsprint was not reaching the opposition press and Canada was thus indirectly contributing to a climate in Guyana of denial of political and civil rights. In 1985, Canada placed on indefinite hold its contribution to Sri Lanka's massive Mahaweli River dam and irrigation scheme, in part because of the Sri Lankan government's intention to resettle some 1.5 million Sinhalese in the arable land resulting from the project despite the fact that the affected area was predominantly Tamil. The Sri Lankan government was thus seen as intending to use the project in a discriminatory fashion that would at the same time weaken the Tamil secessionist movement in the eastern province.

Thus far, however, there is no institutionalized arrangement for the review of all projects to ensure their compatibility with a broad range of human rights criteria. To date, therefore, action of the above nature has been very much dependent on the sensitivity of individual CIDA officers to human rights considerations. In this regard, it is unfortunate that while CIDA has now agreed to establish a unit that "will be given responsibility for ensuring that developing assistance programs are consistent with Canada's overall foreign policy concern for human rights," the government did not explicitly accept the recommendation of the Winegard Report that "all CIDA country program reviews and project approval documents include a section evaluating human rights according to explicit criteria."[48]

b) Positive Dimensions:

1) In all aid recipient countries where there are human rights abuses, an attempt should be made to identify projects that might make a positive contribution to improving human rights observance in general. This could include directing aid to projects that embrace hitherto neglected sectors and groups within the society, to schemes that clearly involve those affected by the project in the development decision-making process, and to literacy and other education projects that are able, *inter alia*, to inform their beneficiaries about the nature of their political, legal, and other rights.

As mentioned earlier, it is important that Canada's aid-rights policy not be confined to penalizing offenders, but also offer positive encouragement for reform, since the latter may often be more productive. In all but the most serious cases of gross and persistent violations of security and subsistence rights, what seems likely to be the most efficacious approach is a blending of punitive and positive measures on a project-by-project basis that has as its purpose the reshaping of country programs so that they are more sensitive to human rights circumstances. This approach would allow for flexibility in Canada's response, tailoring action to the requisites of each situation in recognition of the differing traditions of respect for human rights in developing countries and the unpredictability of their reactions to external pressure.

In terms of positive shaping of Canadian aid to recipient countries, CIDA has made the most significant progress in the area of women in development. The agency now has an Integration of Women in Development section, and every CIDA project is reportedly monitored from its inception to ensure that it encompasses women as well as men and that both sexes benefit from implementation.

Beyond this area, to date, the identification of projects that would contribute to human rights observance has been essentially *ad hoc*, depending on the initiative of individual project officers or the creativity of posts abroad in using mission-administered funds to signal Canada's concern about human rights issues. What is required now is the establishment of broad-based human rights criteria that would be applied regularly at the launching, and subsequently in the evaluation, of all Canadian projects and programs.

2) In areas that fall outside the normal scope of development assistance, Canada should, where circumstances permit, try to advance human rights observance via such forms of help as cooperation in the establishment of human rights offices, the development of democratic election procedures, the strengthening of judicial institutions and judicial training, and perhaps help in the development of police academies that will provide disciplined, apolitical training of personnel in such aspects of police work as restraint in controlling demonstrations and proper procedures of arrest, interrogation, and detention. Aid of this nature must, of course, be approached with extreme caution. It is unlikely to be welcome where it is most needed, and there are risks that cooperation with police forces in particular might be used for unintended purposes and actually contribute to the sophistication of a state's application of repression. Nevertheless, promising opportunities for assistance along the above lines should not be overlooked, since nurturing conditions where law, order, and democracy flourish is an important means of ensuring that just economic and social development will take place.

It is encouraging, therefore, that the government has responded positively to the recommendation of the Hockin-Simard Report that a centre, separate from CIDA, be created to stimulate initiatives of this nature.

3) In part by adopting the measures proposed above, Canadian aid should be gradually shifted to concentrate to a greater degree on a more limited number of states that respect basic human rights and where, in particular, there is evidence of a genuine commitment to improving the lot of their least privileged peoples—that is, those states that have adopted a "basic needs" strategy of development which involves the disadvantaged themselves in decision making. Only under such circumstances will Canadian aid contribute to equitable development and reflect a concern for the realization of basic human rights in general. Such an orientation requires, however, that the purpose of Canadian aid be confined to the objective of promoting Third World development, with a particular emphasis on meeting basic needs. To reduce or terminate aid to some recipients because of violations of rights, while still permitting non-development motivations—especially Canadian economic gain—to find a place in aid policy will inevitably lead to charges of hypocrisy and inconsistency, for as these other motivations intrude on Canadian aid they detract from a focus on equitable, grassroots development and thereby obstruct the realization of basic economic and social rights in recipient countries.

Putting into effect an aid program that is truly human rights-oriented requires the adoption of a number of long-advocated policy reforms. One of these entails, in conjunction with contracting the number of aid recipients as suggested above, simultaneously decentralizing CIDA operations. Together these actions would help to ensure more effective monitoring of programs and projects from both a developmental and human rights perspective and would facilitate the selection of small-scale "basic needs" schemes. Another needed reform is substantial untying of Canadian aid to permit a greater concentration on projects related to agricultural output, health care, education, etc.—projects that have limited requirements for Canadian equipment and services, but which are directly focused on the most disadvantaged. A third is the elimination from the aid program of financing arrangements between CIDA and the Export Development Corporation and other export promotion activities that lead to the selection of capital as opposed to "basic needs" projects and to the selection of aid recipients of commercial promise to Canada at the expense of the poorest countries.

Reforms in some of these areas were advocated in the Winegard Report and recently endorsed in part by the government.[49] It remains to be seen, however, how fully and effectively they will be implemented. The extent to which they are will be indicative of Canada's concern for "basic-needs human development,"[50] and that in turn will be one of the best tests of the seriousness of the Canadian commitment to forging a meaningful linkage between aid and human rights.

Notes

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2. Robert Carty and Virginia Smith, *Perpetuating Poverty: The Political Economy of Canadian Foreign Aid* (Toronto: Between the Lines, 1981), p.176.

3. M.W. Conley, "Development Aid and Human Rights: The Canadian Position," address to the Sixth Annual National Conference on Human Rights and Canadian Foreign Policy, Canadian Human Rights Foundation, Ottawa, April 22, 1983, pp.5-6.

4. Sheldon E. Gordon, "The Canadian Government and Human Rights Abroad," *International Perspectives* (November-December 1983), p.9; and Sheldon E. Gordon, "Canada's Weak Stand on Guarding Human Rights," *The Globe and Mail*, January 11, 1983.

5. Martin Rudner, "Human Rights Conditionality and International Development Cooperation," study prepared for the Canadian International Development Agency under contract 82-433/C335, project 083/00009 (Ottawa: Canadian International Development Agency, 1983), p.71.

6. E. Philip English, *Canadian Development Assistance to Haiti: An Independent Study* (Ottawa: North-South Institute, 1984), pp. 155, 162.

7. Robert Matthews and Cranford Pratt, "Human Rights and Foreign Policy: Principles and Canadian Practice," *Human Rights Quarterly* 7 (May 1985), p.186.

8. Irving Brecher, "Foreign Aid and Human Rights," *International Perspectives* (September/October 1985), pp.23, 25.

9. See, for example, *The Globe and Mail* November 18, 1982; January 11, 1983; April 3, August 20, 1984; May 2, May 27, and July 12, 1985.

10. See *Competitiveness and Security: Directions for Canada's International Relations* (Ottawa: Supply and Services Canada, 1985), p.36.

11. For a list of the witnesses, see *Independence and Internationalism: Report of the Special Joint Committee of the Senate*

and the House of Commons on Canada's International Relations (Ottawa: Supply and Services Canada, June 1986), Appendix B, pp.161-8; *For Whose Benefit? Report of the Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs* (Ottawa: Supply and Services Canada, May 1987), Appendix C, pp.143-5.

12. In the instances of Chad, Chile, El Salvador, Guatemala, Honduras, Indonesia, Kampuchea, Nicaragua, Sri Lanka, Vietnam, and Zimbabwe. Compiled using Cathal Nolan, *Research Guide to Human Rights in Canadian Foreign Policy: Hansard, House of Commons, 1966-1983*, 2 vols. (Toronto: Development Studies Programme, University of Toronto, June 1984).

13. Canada, House of Commons, *Debates*, March 3, 1977, p.3610, and March 21, 1978, pp.3989-96.

14. Canada, House of Commons, *Debates*, May 31, 1978, p.5924.

15. Report of the Sub-Committee on Canada's Relations with Latin America and the Caribbean, in Standing Committee on External Affairs and National Defence, *Minutes of Proceedings and Evidence*, 32nd Parliament, 1st session, no. 78, November 23, 1982, pp.14-15.

16. *Independence and Internationalism*, pp.102-5.

17. *For Whose Benefit?*, esp. pp. 25-30.

18. Canada, Department of External Affairs, *Statements and Speeches* 78/13, October 26, 1978, p.6.

19. "Canada in a Changing World–Part II: Canadian Aid Policy," in Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence*, no. 3, June 10, 1980, p.176.

20. *Statements and Speeches* 83/6, April 22, 1983, p.4.

21. *Debates*, June 16, 1981, p.10654; *Statements and Speeches* 81/21, July 29, 1981, p.3.

22. See, for example, *Statements and Speeches* 85/16, October 18, 1985, p.6.

23. *Elements of Canada's Official Development Assistance Strategy* (Ottawa: Canadian International Development Agency, 1984), p.36.

24. *Statements and Speeches* 85/16, October 18, 1985, p.6.

25. *Elements*, p.35.

26. *Canada's International Relations: Response of the Government of Canada to the Report of the Special Joint Committee of the Senate and the House of Commons* (Ottawa: Supply and Services Canada, December 1986), p.74; *Canadian International Development Assistance: To Benefit A Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Supply and Services Canada, September 1987), pp.51-2. See also CIDA, *Sharing Our Future: Canadian International Development Assistance* (Ottawa: Supply and Services Canada, 1988), p.31.

27. *Canadian International Development Assistance*, pp.52,55.

28. See, for example, Meyer Brownstone, "Canadian Aid to El Salvador Gone Askew?", *The Globe and Mail*, June 16, 1986; *The Globe and Mail*, November 21, 1987; *Catholic New Times*, January 10, 1988.

29. *Canada's International Relations*, pp.74-5.

30. *Canadian International Development Assistance*, pp.51, 55. See also *Sharing Our Future*, pp.31-2.

31. The discussion which follows is an expanded and modified version of the analysis presented in T.A. Keenleyside, "Development Assistance," in *Human Rights in Canadian Foreign Policy*, ed. by Robert O. Mathews and Cranford Pratt (Kingston and Montreal: McGill-Queen's University Press, 1988), pp. 187-208.

32. Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6 (November, 1984), p.404.

33. Carty and Smith, *Perpetuating Poverty*, p.176.

34. *Debates*, March 21, 1978, p.3992. See also Rudner, "Human Rights Conditionality," p.39.

35. Rudner, "Human Rights Conditionality," p.57.

36. Matthews and Pratt, "Human Rights and Foreign Policy," pp.163-4.

37. This idea was presented by the Trudeau government in a somewhat different context in Department of External Affairs, *Foreign Policy for Canadians* (Ottawa: Queen's Printer, 1970),

booklet 1, pp.10-11, 34. For a fuller development, see James E. Hyndman, "National Interest and the New Look," *International Journal* 26 (Winter, 1970-1971), pp.9-10.

38. Bernard Wood, in Proceedings of the Eighth Annual Conference on Human Rights and Canadian Foreign Policy, Canadian Human Rights Foundation, Ottawa, March 29, 1985, p.126.

39. *For Whose Benefit?*, p.26.

40. Paul Gérin-Lajoie, *The Longest Journey* (Ottawa: Canadian International Development Agency, 1976), pp.15, 17, 22.

41. For Canadian sources critical of sanctions, see, in particular: Margaret Doxey, *Economic Sanctions and International Enforcement* (London: Macmillan, 1980); Margaret Doxey, "Do Sanctions Work?" *International Perspectives* (July/August 1982), pp.13-15; John W. Holmes, "Everything Has Its Season—and That Adds to Complexity," *International Perspectives* (September/ October 1977), pp.22-24.

42. *For Whose Benefit?*, p.27.

43. Wood, Proceedings of Conference, March, 1985, p. 127.

44. Martin Rudner, "The Evolving Framework of Canadian Development Assistance Policy," in *Canada Among Nations: 1984*, ed. by Brian W. Tomlin and Maureen Molot (Toronto: James Lorimer, 1985), pp.141-2.

45. *Competitiveness and Security: Directions for Canada's International Relations* (Ottawa: Supply and Services Canada, 1985), p.9.

46. Christian Bay, *Towards a Post-Liberal World Order of Human Rights*, Development Studies Programme Working Paper No. A7 (Toronto: University of Toronto, November 1983), p.5.

47. Cuba and Guatemala are other cases where aid was terminated, but not EDC activity.

48. The Department of External Affairs and CIDA will simply "provide the Cabinet with the information available on human rights situations so that the Cabinet may take this aspect into account in determining the budget envelopes allocated to each country." *Canadian International Development Assistance*, pp.51, 55.

49. See, for example, *Canadian International Development Assistance*, pp. 57-8, 81-4; and *Sharing Our Future*, pp. 33-5, 51-3.

50. *For Whose Benefit?*, p.64.

Civil-Political Rights and Canadian Development Assistance

Rhoda E. Howard

Résumé

L'auteure se porte à la défense des initiatives du gouvernement du Canada en 1987-88 à l'effet de protéger les droits civils politiques à l'étranger, pour deux raisons: d'abord parce que le principe de l'interdépendance de l'ensemble des droits de la personne (droit civils, politiques et économiques) est un principe juste dans les faits et ensuite parce que même aux plus bas niveaux de richesse matérielle, les individus ont besoin d'être protégés par le droit à la protection des communautés, comme par exemple, la liberté de culte religieux.

Elle propose dix droits-clés, recouvrant les catégories droits à la survie (vie, nourriture et santé), à l'association (non-discrimination et droit à une famille), à la protection (habeas corpus et indépendance de la magistrature) et à l'accession au pouvoir (droit à l'éducation, liberté de presse et d'association), servant à la fois à titre d'unité de mesure et de domaines dans lesquels le nouveau Centre international des droits de la personne et du développement démocratique du Canada pourrait se concentrer. Même si certaines stratégies telle l'approche des besoins fondamentaux, mettent de l'avant les droits économiques, l'auteure propose de nouvelles initiatives afin de promouvoir les droits civils et politiques, sous la condition expresse qu'elles aient un caractère non-interventionniste et s'appuient sur une demande d'aide locale provenant soit de gouvernements dont l'orientation est démocratique ou d'organismes non-gouvernementaux canadiens ou locaux.

1. Introduction

In 1987 the Canadian government announced a new direction for its international development assistance program. As part of this new direction, the government pledged to include human rights as an important focus, and in particular to "create an International Centre for Human Rights and Democratic Development . . . [to] work closely with governments, public institutions and NGOs in developing countries, to help establish and strengthen institutions, programs and activities that promote internationally recognized human rights."[1]

This paper defends the inclusion of civil and political rights in Canadian foreign policy and foreign aid programs. The argument is sometimes made that there is an inherent Western bias in civil and political, as opposed to economic, social, and cultural rights, and that it would therefore be paternalist to include a focus on such rights in Canadian policy.[2] But as I have emphasized elsewhere, without civil and political rights all other rights are imperilled: "no economic right is safe so long as the State has the power to incarcerate, torture or murder a person claiming it. Nor is any economic right safe as long as there is no means, through the press, association or politics, to assert it."[3]

The argument presented below is an independent consideration of current Canadian policy debates emerging from my research on international human rights, especially in Anglophone Africa, as well as my theoretical speculations on rights.[4] I have not been involved in the current moves by the federal government to include human rights formally in the Canadian foreign aid agenda.

2. States and Rights

Definition of Human Rights

Human rights can be defined briefly as the rights one has simply because one is a human being. Rights are held by individuals. Rights are entitlements, against other citizens but especially against the state. Rights constrain the state either to refrain from or to engage in certain actions.[5]

This notion is Western in origin and derives directly from the liberal tradition of political thought, although similar notions can be found in other traditions.[6] Its Western origin, however, does not limit its universal applicability, either in theory or in practice. All societies are now state societies, and all human beings are subject to the authority of one or another state. Arguments for the limited applicability of rights can be easily refuted. Although the Lockean tradition did stress a limited range of rights, particularly property, that tradition has been modified by social-democratic, socialist, and Third

World thinking, not least in the recent stress on "third generation" rights to peace, a clean environment, and development. The 60-odd rights enshrined in the International Bill of Human Rights[7] encompass these changes. Moreover, by their ratifications of the 1966 covenants on rights, a large number of countries now accept, at least in principle, the universality of human rights. Finally, both common sense and sociological consideration of human nature impel the universal acceptance of at least a narrow range of rights; of protections against state actions that any human being would find reprehensible and unbearable. Thus the Canadian Council of Churches assumes "that all people everywhere, regardless of their ideological, cultural, or political system, wish to be free from disappearance, from arbitrary arrest, detention, torture and extra-judicial execution and from state-sponsored racial discrimination."[8]

Despite these legal and sociological claims for universality, the definition of human rights could be considered too rigorous insofar as it is possible to live a life of dignity without actually having entitlements or claims against the state. Although it is now an accepted truism to state that human rights are necessary for human dignity,[9] in many traditional societies human dignity was based not on individual claims or entitlements, but on conformity to prescribed social roles.[10] Social justice, defined as equitable sharing of resources, was frequently a principle of such societies. In the contemporary world, however, most individuals live in urbanizing, modernizing, and increasingly stratified nation-states. For them, the notion of human rights as individual entitlements or claims against the state is a necessity.

Canada's Role in Protecting Rights

Overall, Canada has a miniscule role to play in the promotion of human rights in its aid-recipient countries. Both development and human rights are primarily matters of internal social change and political action. Therefore, it is appropriate for Canada to be modest in its ambition to promote and protect human rights abroad, and to act with "absolute transparency" with regard to its methods and motives, as Gisèle Côté-Harper and John Courtney have argued.[11] Nevertheless, even with such a modest mandate, the most effective long-run strategy for promoting human rights is to help people to seek and protect their own rights.

There is a dilemma here. Canada is a state in a world of state players. In its interactions with other states, its chief concerns are security and sovereignty, political alliances, and trade. Yet a true commitment to human rights would require Canada to support claims by foreign individuals against their own states. In many instances, Canada will not be prepared to do this.

In a widely-cited 1980 volume whose purpose was to influence the debate on human rights and foreign policy in the United States, the philosopher Henry Shue proposed three levels of duties for states interested in human rights abroad. These are: "I. Duties to *avoid* depriving [of rights]; II. Duties to *protect* from deprivation; III. Duties to *aid* the deprived."[12] If Canada were to follow all three of these precepts, it would have to make substantial changes in its foreign policy.

At first glance, it could be argued that Canada does not engage in the direct deprivation of others' rights abroad. Canada is not an expansionist or imperialist power, and its human rights initiative has been welcomed merely "because it is Canada."[13] But Canada does have political alliances that encourage gross abusers of human rights. On the international scene, one could make the argument that our most important ally, the United States, is more rights-abusive than rights-protective in its foreign policy. Canada is also quite selective in its application of rights criteria to its aid recipients. Indonesia, for example, was a core aid recipient in 1985-1986, despite allegations of genocidal practices in East Timor. It appears that Canadian trade with Indonesia and Indonesia's role as a Western ally in the volatile South Asian region preclude modification of Canada's aid policy there on human rights grounds.[14]

Shue's second duty is to protect people from deprivation; that is, to attempt to change social and political conditions so that potential and predictable deprivations do not occur. This is an area in which Canada is, perhaps, more comfortable. Canadian policy already encompasses the principle that it is particularly concerned with "systematic, gross, and continuous" violations of human rights.[15] It is difficult, however, to implement such a concern in practice. There has been much discussion in Canada over using carrots or using sticks; that is, over encouraging relative rights-protectors rather than punishing relative rights-abusers. I believe that especially with regard to unintended rights-abuse that is the consequence of historical conditions of underdevelopment or the newness of national societies, the carrot approach is far more effective. Encouragement can be offered through Canadian aid to those making relative improvements. As John Holmes noted in testimony to the Special Joint Committee on Canada's International Relations, "You cannot simply order countries to behave. . . . You have to cajole, persuade, do all sorts of things."[16] The use of sticks leaves very little room to manoeuvre on human rights grounds, and should be confined to cases of gross and deliberate violations of rights which might otherwise leave Canada open to the charge of complicity, as in South Africa.[17] Punitive human rights policies are unlikely to obtain results since most deliberately rights-abusive regimes are quite intransigent, and unlikely to modify their practices unless under severe internal or international pressure. As a small—perhaps "middle"—power Canada cannot exert such pressure, except perhaps in concert with other like-minded Western states.

Shue's third duty is to aid the victims of human rights abuses. This is the least problematic of the human rights duties, as it frequently involves emergency humanitarian assistance to people—especially women and children—perceived to be patently in need of help. When such individuals are the victims of states not our allies—for example Ethiopia—then the instinct to give is less likely to be stemmed by considerations of geopolitical factors. It is more difficult to have massive infusions of aid to victims in countries perceived to belong to the Western alliance, or where the United States has political interests. In any event, aid to victims, while it has the most immediate short-term impact, is the least effective in the long run, as it does not ameliorate the rights-abusive conditions that created the victims in the first place.

The Need for an Integrated Policy

If the commitment of the current Canadian government to international human rights is sincere, than its policy will have to be applied irrespective of alliance politics and trade relations. Above all, it will be necessary to integrate foreign and refugee policies with aid policy.

I am somewhat skeptical of the flurry of official interest in human rights, in Canada and elsewhere, in the 1980s. In the case of Canada, while the motive may be sincere, consistency is lacking. The most obvious illustration of lack of consistency is the move by the Mulroney government in 1987-1988 to limit a key method of aiding victims of rights-deprivation, namely, admission of refugees into Canada. This is despite the government's contention, made in December 1986 in the context of the debate on entrenching human rights in foreign relations, that "Canada is widely known for its generous provision of sanctuary to refugees and oppressed persons from Central America and intends to maintain this policy."[18]

Rhetoric about human rights may easily be set aside when other interests are perceived to be at stake. In 1987 the government claimed that, contrary to past practice (including Canadian approval of a $1.07 billion International Monetary Fund loan to South Africa in 1982),[19] it would henceforth attempt to ensure that "due consideration" is given to human rights practices in the activities of international financial institutions.[20] Further, it accepted in part a recommendation to link arms exports to the human rights practices of recipient countries.[21] But in the light of the past selectivity of Canada's approach to international human rights, it is best not to be too sanguine about actual changes likely to occur in Canadian policy.

With this in mind, it is again appropriate to note the modesty of current proposals to include civil and political rights in the Canadian foreign aid agenda. Such inclusion, it will be argued below, can be done in a consistent manner, and can focus on key rights that are a measure of, and contribute to, overall successful rights-protective performance. It is unlikely, in my view, that the key elements of Canadian foreign relations will change in accord with any consideration of the relative levels of rights-abuse and rights-protection in the various countries with which Canada deals. But in the world of realpolitik, even a commitment to promoting human rights only when no other interests are at stake can be taken as an encouraging step.

3. A Framework of Key Rights

The Underlying Principle of Interdependence

It is by now a truism, repeated by anyone who wishes to be regarded as a legitimate actor on the international human rights stage, that all human rights are interdependent and indivisible. In fact, however, there is still a tendency to discuss—and perhaps to implement in practice—a "hierarchy" of human rights. It is no accident that in the underdeveloped world, this hierarchy usually gives precedence to economic over civil-political rights. Economic rights are to be achieved progressively as is feasible (article 2.1, Covenant on Economic, Social and Political Rights), while civil-political rights are to be given effect immediately (article 2, Covenant on Civil and Political Rights). Moreover, ostensible commitments to economic rights in poor countries are frequently touted as legitimate reasons to ignore civil and political rights that might "stand in the way" of that nebulous goal, development. In recognition of this tendency, the 1986 United Nations Declaration on the Right to Development refers to the right of "every human person and all peoples . . . to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."[22] Thus the resolution reaffirms in principle the importance of all rights, even in the poorest countries.

Nevertheless, this interdependence of human rights might be taken merely to be rhetorical. If that is the case, then the current focus of the Canadian debate on the inclusion of civil and political rights in aid decision might be irrelevant or indeed, a deflection away from the Canadian International Development Agency's true goal of economic development. But there is also a great deal of empirical evidence for the interdependence of human rights; indeed, a case can be made that without civil and political rights, economic rights cannot be attained and maintained.[23] Several studies show that the "omelette thesis" (breaking some eggs/heads in the interests of the omelette of development) does not work.[24] At best, a "development" policy that does not include civil and political rights achieves growth in gross national product unaccompanied by any improvement in equality, equity, or self-reliance.[25] This tendency was noted by the Special Joint Committee on Canada's International Relations: "economic development by itself does not resolve social and political tensions. It often increases them. Many countries in Latin America, for example, achieved rapid economic growth in the 1970s and, at the same time, suffered political polarization, instability and the plague of human rights violations."[26]

There may be a few cases in which this interdependence does not apply. South Korea, for example, apparently was able to expand the national bowl of rice sufficiently for much of the new wealth to "trickle down" to the poorest, without permitting most civil or political rights. But South Korea's success may have been due to special circumstances such as the redistribution of land taken over from former Japanese owners after the Second World War.[27]

The example of successful "development" (overall increase in economic rights) in South Korea's special case should alert us to another tendency in the international debate. This is the tendency to confine the discussion of economic vs. civil-political rights to the issue of whether civil and political rights will promote development, without considering that even for the poorest (who are consistently asserted to be CIDA's prime concern), civil and political rights may be valued in and of themselves.[28]

Human beings are social creatures. Even in extreme conditions of deprivation, they value their customs, beliefs, and rituals. They will try to safeguard their families and communities from disruption, and they will go to great lengths to protect their languages and other symbols of their special claims to humanness. Frequently, individuals have chosen to suffer, indeed to die, rather than to renounce their sacred beliefs. In 1972-1973, Jehovah's Witnesses in Malawi were expelled, beaten, raped, and murdered because they refused to carry membership cards in the ruling party; to participate in politics violated their religious precepts.[29] Malawian Jehovah's Witnesses are poor peasants, not members of the wealthier classes. One does not need a full belly to value social symbols and deeply-held beliefs.

It is, in my view, rather elitist to assume that the world's poor are incapable of valuing their societies, their cultures, and their family integrity unless they first attain a minimal level of material existence. The debate on the "interdependence" of human rights confines discussion of civil and political rights to their relevance in promoting economic rights. While it may not be within the mandate of CIDA to protect civil and political rights if they do not actively contribute to development, it should be within the mandate of a broader Canadian rights-oriented foreign policy. The new institute of "Human Rights and Democratic Development," announced by the government on November 16, 1987, therefore should have a mandate broader than simply the promotion of rights for the sake of development. Its institutional independence from CIDA[30] will promote that broader mandate.

Ten Key Rights

If the interdependence of economic and other rights (both social-cultural, and civil-political) is recognized, and the foreign aid policy of the Canadian government is to be adjusted to try to assist in realization and protection of all rights, then the task appears to be enormous. There are approximately 60 actual rights contained in the International Bill of Human Rights. The problem is to reduce this list to a manageable few that can be taken to represent the whole.

I have attempted such a reduction elsewhere, and have derived a list of 10 rights which, I argue, can realistically be taken to "stand-in" for all the articles in the international bill.[31] The 10 rights are divided into four categories:

1. survival rights: life, food, health care
2. membership rights: nondiscrimination, right to be a family
3. protection rights: *habeas corpus*, independent judiciary
4. empowerment rights: education, free press, freedom of association.

This list is not a hierarchy: although survival rights come first, they are first only in an instrumental, not a moral, sense—one cannot enjoy other rights if one is not physically alive. Nor does this list imply that rights not on it are inferior—merely that protection of these rights implies a fair degree of certainty that other rights are protected too. For example, if nondiscrimination, family, and free association are protected, then freedom of religion is probably secure.

The key contribution of this list is the insistence on protection and empowerment rights as well as survival and membership rights. The list reflects both the belief that human beings value civil and political rights even at very low levels of subsistence, and the theoretical stance that without protection and empowerment, the "rights" to survival and nondiscrimination become subject to the whim of the state.

In the long run, the guarantee of a right depends on citizens' empowerment to demand it. Even the most benevolent of dictators—

who might provide the concrete substance of a right—needs information from below; in most cases, dictators are not benevolent and institutional controls on their rule are absolutely necessary. As Henry Shue puts it:

> A right is the basis for a certain kind of demand: a demand the fulfillment of which ought to be socially guaranteed. Without channels through which the demand can be made known to those who ought to be guaranteeing its fulfillment . . . one cannot exercise the right. . . .
>
> What is missing that keeps people under the ideally enlightened despot . . . from enjoying rights . . . is social institutions for demanding the fulfillment of the correlative duties, especially the duty to provide one vital form of protection; protection against deprivation by the government itself. . . .[32]

Thus even the most enlightened non-democratic rule is insufficient as a protection of rights. What is needed is institutions that can control the power of the ruler. *Habeas corpus* is a stand-in for a whole series of civil or legal rights which protect fairness in police and court proceedings. An independent judiciary protects the rule of law and constitutional controls on the ruler. Thus, in my view, attempts by the Canadian government to assist in the implementation of the rule of law in underdeveloped countries are highly commendable; and they are certainly not merely the interfering export of Canadian institutions, as some critics appear to have suggested.[33]

Protection rights are, in their turn, buttressed by citizen empowerment, a concept which accords closely with the definition of democracy put forward by the government's special rapporteurs on human rights and democratic institutions; that is, "the participation of citizens in decision-making which affects their lives."[34] The empowerment right of education assists citizens in articulating their grievances and concerns, while that articulation actually takes place through freedom of the press and association. It is important to note that these rights do not necessarily arise after minimal levels of survival rights have been attained; rather, they may chronologically precede them. Historical data suggest that in nineteenth-century Europe governments instituted social welfare reforms *after* literate, organized workers used the press and their freedom of assembly to make demands on the state.[35] Economic and political rights are therefore interdependent in a very practical sense; without the capacity to articulate political grievances, the lives of the lower classes can be, if not nasty and brutish, extremely short. Efforts already made by CIDA and the IDRC (International Development Research Centre) to support trade union organizations in South Africa and peace organizations in Guatemala, are rights-protective; they help people to organize (and in the case of Guatemala, to stay alive) so that they can demand their rights to improved living conditions—to enough food and minimal health standards.[36]

This list of key rights, or a list like it, could assist in resolving the difficulties of setting up standards for assessing the human rights performance of Canadian aid recipients. The Winegard Report on Canadian foreign aid recommended a "grid" of categories which it urged the government to adopt in assessing performance: the categories are "human rights negative," "human rights watch," "human rights satisfactory," and "human rights positive."[37] The report also urged the government to start writing its own assessment of the human rights performance of each aid recipient, along the lines of the annual Norwegian reports, which focus on protection of economic as well as civil-political rights in Norway's aid recipients.[38] The government rejected these recommendations on the grounds that such assessments would be too subjective and that there are no "fixed and coherent rules" for them.[39]

It is, indeed, a very difficult task to evolve clear, quantitatively verifiable criteria for overall rights performance. On the other hand, our capacity to research human rights in an unbiased manner is improving. Even the U.S. government reports, mistrusted by many researchers in the early 1980s, are now considered to be fair except when, as in Nicaragua, El Salvador, or South Korea, strong U.S. interests are at stake.[40] This suggests that Canadian reports on key aid recipients could be feasible, although it would be unwise to use such reports in a mechanistic manner as a hard and fast indicator of mandatory aid "cut-off" points.

Political Rights and the Multi-Party System

The list presented above intentionally avoids inclusion of multi-party politics as a key right. Article 21 of the Universal Declaration of Human Rights mandates that every individual have "the right to take part in the government of his [sic] country, directly or through freely chosen representatives." This is reflected in the Canadian government's interest in assisting in the implementation of "genuine elections" abroad, for example by training election officials and providing ballot boxes.[41]

Genuine elections do not necessarily imply a multi-party system. Many countries have one-party systems, with internal electoral procedures similar to the primary system of the American Republican and Democratic Parties. All other things equal, a multi-party system is preferable to such one-party systems, which allow personnel (members of parliament, cabinet ministers, or their equivalents) to be changed but which do not permit removal of the actual government. But multi-partism does not define democracy. One can assess the relative levels of democracy of one-party states by investigating internal party procedures; for example, whether candidates for office can be freely nominated from below; whether ideological conformity to a party line is demanded; whether there is more than one candidate for president.[42] Especially in new states threatened by secessionist or ethnic schism, a one-party system that incorporates the elites of all competing factions may be a better bet for order and stability than an unworkable multi-party system; contrast, for example, the relative order and political stability of Zambia and Tanzania with the extreme disorder of Uganda and the seesawing between civilian and military rule in Ghana. Few, if any, new governments can immediately implement multi-party rule.

The use of multi-partism as a criterion of democracy has given the term "democracy" a bad odour in many Third World states. It is, therefore, unfortunate that the Canadian government has chosen to name its new institute for the promotion of international human rights the International Centre for Human Rights and *Democratic* Development.[43] The government's special rapporteurs on the institute were sensitive to the ideological usage of the term "democratic," about which they had been warned by many of their interlocutors, and therefore had recommended the title "International Centre for Human Rights and *Institutional* Development."[44] Such a title is far less ideologically loaded and reflects a concern for the relatively less politicized development of institutions of protection and empowerment; for example, aid to judiciaries and parliamentarians in Africa, the Caribbean, and South America.[45]

A further difficulty is the existence in the United States of the National Endowment for Democracy (NED). The NED is a congressionally-funded organization which received U.S. $15 million in 1986-1987.[46] If the Canadian institute were taken to be a sister organization to the NED, this could seriously affect its credibility in the underdeveloped world. Canada's difference from the United States, its reputation for political moderation, its willingness to treat newly-emerging leftist governments with respect, and its preoccupation with social welfare as well as political democracy legitimize its commitment to the entire range of human rights in its foreign aid program. If an institute for the promotion of human rights abroad is to be created, it should be distanced as far as possible from the American version.

4. Civil-Political Rights and Foreign Aid

Economic Rights Only: The Basic Needs Approach

The current Canadian initiative to set up an international institute for the promotion of human rights and democratic development represents a move away from the stress during the 1970s on a "basic needs" approach to development-oriented aid. This approach, in itself a reaction to what was seen to be an overly-technological preoccupation with growth in the 1960s, advocated focusing aid on "the poorest" and providing the material bases for an adequate right to life.

The basic needs approach has some distinct advantages for the realization of human rights: it is not merely a "lowest common denominator" welfarist program. Provision of minimal welfare could result in long-term human capital formation; that is, in a healthy, educated labour force which could contribute more productively to economic development. Further, healthy, well-fed people are more likely to be able to organize in defence of their rights and to initiate demands on the state. While above it was noted that in nineteenth-century Europe, demands on the state preceded the introduction of basic social welfare programs, it must be remembered that it was the relatively better-off sector of organized labour, combined with middle class reformist pressure, which initiated these demands.

A second advantage of the basic needs approach to development, focusing only on material needs, is that it avoids the appearance of being political. For example, the well-known British theorist on international relations, R.J. Vincent, advocates that all aid-giving countries concentrate their efforts on a "quasi-technical search for a pre-political programme" that could guarantee the right to subsistence.[47] He believes that the problem of starvation can be solved by men of good will, outside the political arena. But unfortunately in the modern age, governments of both right and left routinely use enforced starvation as a weapon against their own people. And it is precisely in the poorest countries that the right to food is most politicized. In Ethiopia, for example, the effects of drought and of civil war are compounded by abusive, ideologically-based collectivization and enforced resettlement schemes which have reduced productivity even in southern zones not originally affected by drought.[48] In many capitalist-oriented Third World states, especially in the Americas, peasant producers are driven from their lands in the interests of private capital. The politics of food is one of the most serious human rights issues of the late twentieth century.

Thus whatever the merits of the basic needs approach to rights, it is insufficient as a protection of the very rights which it suggests are the most important; that is, basic survival rights. No human rights program that denies survival rights and basic material needs is legitimate; fortunately, in Canada the need for material security is accepted by almost all parties to political debate and the proposition does not need to be defended. Nevertheless, material subsistence without empowerment is insufficient.

Civil and Political Rights

Canada, in adopting its new international human rights initiative, has recognized the fundamentally political nature of all rights. In fact, even before the notion of an institute of human rights and democratic development was articulated, many of the initiatives taken by various agencies of the government with respect to non-material rights directly reflected what I have described, in section 3, as protection and empowerment rights. In the realm of protection rights, for example, CIDA has provided grants to assist in setting up ombudsman offices in Nigeria and Sri Lanka.[49] The protection rights that CIDA proposes to stress in the future—the legal enshrinement of rights, legal assistance, assistance to families of detainees, and assistance to ombudsmen[50]—in fact reflect measures that various Canadian agencies have been taking for some time.[51]

There is plenty of room for new initiatives in the realm of protection rights. The special rapporteurs note, for example, the possibility of South-South linkages in human rights.[52] In Anglophone Africa, such South-South linkages would be useful in the legal field. Innovative procedures and courts have been set up in several countries in order to overcome what is perceived to be the excessive formality of the British tradition. A country such as Tanzania, with experience in using local adjudicators along with formally-qualified judges, could aid countries such as Ghana, which has set up "People's Courts" in order to expedite corruption trials.[53]

The Côté-Harper and Courtney Report also mentions workshops on legal services in rural areas of Africa sponsored by CIDA.[54] One of the most serious impending problems in Africa will be the expropriation of land from peasants as a result of the increasing moves toward both state ownership and capitalist privatization. Ordinary peasants will be vulnerable to forcible expropriation, as has already occurred, for example in Ghana; women will lose land rights to men and to a male-dominated state; and illiterates will be pushed out by literates. Already it is estimated that in Kenya 22 per cent of the population is landless.[55] The training of lawyers from all sectors of the population is necessary to defend the rights of peasants before the situation becomes one of mass landlessness and malnutrition, as in some Central American countries.

In the international arena, the training of more African lawyers could assist Africa in coping with multinational corporations. Black

Africa needs more, not less, international investment, but if it arrives, abuses and illegal transactions will multiply. Africans also need to derive new procedures to control corruption and to press for international laws against, for example, Western banks' accepting national wealth for deposit in the personal accounts of dictators. Better training of lawyers and economists would also assist in implementing the call for a New International Economic Order, first propounded in 1974. Training of lawyers in international law would also demonstrate a recognition by Canada of the fact that the organization of the world economy and Third World countries' weak place in it have a profoundly negative impact on the capacity of even the best-willed underdeveloped state to protect economic rights.[56]

In the realm of the three empowerment rights, the various agencies of the government have been concerned in the past chiefly with freedom of association. The types of projects that the government has funded have in some cases had a surprising political edge to them, especially insofar as unions and cooperative programs have been the objects of support. CIDA proposes in the future to stick to the same kinds of projects it has funded in the past.[57] This direction is quite sensible.

Unfortunately, in the 1986-1987 debate on human rights and democratic development, education does not appear to have been seen as a key civil-political right. But education, especially higher education, is explicitly linked to politics. There is much that an international centre on human rights and democratic development could do to promote higher education for Third World students. For example, the Canadian government is committed to integration of women into development projects.[58] But it appears that from the educational standpoint, its approach to this goal is to increase the numbers of Third World women CIDA trains in certain technical disciplines, rather than to enable such women to study their own situation as a sex. The latter approach would require encouragement of women students in law, philosophy, political science, and sociology; disciplines which frequently produce scholars critical of the established social order. To promote civil and political rights, both men and women from underdeveloped countries need to study in the traditional humanities and social scientific disciplines. Often, such men and women come from countries where open debate is not permitted; universities may be under strict ideological control, and there may be spies in the classroom.

Freedom of the press was proposed in section 3 above as a key empowerment right. In this area as well, there are opportunities for a new international centre to take initiatives. These can range from the simple provision of newsprint to the training of journalists in responsible but free speech. Freedom of the press and of speech in general could also be facilitated by concerted efforts to stock or restock libraries and buy newspaper and journal subscriptions. When foreign exchange is short, governments often ban the importation of books. Yet knowledge is power, and it is power that is almost monopolized by the Western world. If the Canadian government is seriously interested in human rights, it should consider ways to make knowledge more readily available to those who need it. Books are far cheaper than machines, and in the long run may do far more to change a society in the direction both of democracy and of appropriate development plans.

A Non-Interventionist Human Rights Strategy

The close coincidence of both past and proposed official Canadian projects in the realm of civil and political rights with the key protection and empowerment rights proposed in section 3 of this paper buttresses the proposition that this list of key rights, or a slightly modified one, could be used to assess human rights performance and also to identify future projects. While all of these projects have a potential political significance, the approach of CIDA, the IDRC, and the other government agencies involved, so far seems to have been the appropriate one of non-interventionist strategies. CIDA has worked through Canadian and local NGOs, and has been responsive to requests for assistance from both government and private citizens abroad. In the area of free elections, assistance has been limited to technical expertise in response to requests from the governments concerned.

This strategy is appropriately modest. It focuses, as the Hockin-Simard Report noted in 1986, on "respect for careful procedure and practical results."[59] As noted above, there is very little that Canada or any Western nation can actually do to promote human rights or democratic development abroad. The difficulties with regard to rights and development are frequently, although not entirely, the results of long-term historical conditions, and require deep social structural changes for their amelioration. To say this is not to absolve contemporary elites or dictators from their responsibilities with regard to human rights violations; on the contrary I have elsewhere argued strongly for individual responsibility.[60] But Canada is not about to engage, nor should it, in the actual physical overthrow of rights-abusive dictators or regimes. The best it can do is to assist those who are attempting to protect or realize their rights.

The Côté-Harper and Courtney Report suggests a number of areas in which Canada could offer assistance to aid recipients.[61] In some cases this assistance would be government-to-government; in others it would be through local and Canadian NGOs. NGOs have often been recognized as excellent development and human rights actors, because of the dedication of their staff, their relatively low administrative costs, and the fact that they tend to be quite firmly rooted in the local communities they serve. The 1986 Special Joint Committee on Canada's International Relations recommended explicitly that in "countries [that] have a poor human rights record but not so extreme as to justify the termination of aid," Canada's development assistance should be channeled through NGOs.[62] But it should perhaps be noted that NGOs are vulnerable to their host country's displeasure. Projects aimed at direct empowerment of local people might be perceived to be oppositional and dangerous. The paradox is that only the more democratic aid-recipient countries are likely to permit projects whose focus is on civil and political rights. However, the entrenchment of such rights even in countries favourably disposed to democracy is no small task, and a Canadian contribution to the long-term stability of democratic institutions would be worthwhile.

Aside from their overall efficiency and dedication, many NGOs contribute to development by the spread of new ideas and new approaches to political organization. As such, they help Third World citizens to help themselves. Perhaps just as importantly, NGOs help to break down the distinction between Canadians and foreigners. State-state relations reinforce international borders, while international NGOs undermine the principle of national loyalties first. Reliance by CIDA, the IDRC, and other Canadian organizations on NGO activities has not only an immediate instrumental value but a long-term ideological value in changing political attitudes, not only in the recipient countries, but also possibly in Canada itself.

5. Conclusion

This paper has attempted an independent assessment of recent initiatives by the federal government to promote human rights and democratic development abroad. An effort was made to justify the interdependence of all rights and the need for Canada to promote civil-political as well as economic rights in its aid program.

The overall impression of the recent initiatives is quite favourable. Canadian institutions have in the past identified a range of projects for which Canadian assistance and expertise are valuable, and which promote internal human rights without appearing to be politically interventionist. Care has been taken to be responsive to local demand. The Coté-Harper and Courtney Report suggests ways of institutionalizing and broadening this mandate, without a change of focus or procedure. It is unfortunate, however, that the rapporteurs' suggestion that the word "democratic" be eschewed as ideologically loaded, and the term "institutional development" be substituted, was not accepted by the government.

Although the establishment of an International Centre for Human Rights and Democratic Development is a useful idea, a genuine commitment to international human rights by the Canadian government requires integration of its foreign aid, foreign policy, and refugee/immigration policies. Such integration is not likely to occur. The best that can be hoped for is that there will be a slight expansion of Canada's commitment to human rights when other factors such as state sovereignty, political alliances, or trade do not intervene.

Notes

1. Canadian International Development Agency, *Sharing Our Future: Canadian International Development Assistance* (Ottawa: Supply and Services Canada, 1988), p. 32.
2. Gisèle Côté-Harper and John Courtney, special rapporteurs, *Report to the Right Honourable Joe Clark and the Honourable Monique Landry: International Cooperation for the Development of Human Rights and Democratic Institutions* (June 30, 1987), p. 24, paragraph 77; hereafter referred to as the Côté-Harper and Courtney Report.
3. Rhoda E. Howard, "Law and Economic Rights in Commonwealth Africa," *California Western International Law Journal* 15 (summer 1985), p.627.
4. Rhoda E. Howard, *Human Rights in Commonwealth Africa* (Totowa, N.J.: Rowman and Littlefield, 1986); Jack Donnelly and Rhoda E. Howard (eds.), *International Handbook of Human Rights* (New York: Greenwood Press, 1987); Rhoda E. Howard and Jack Donnelly, "Human Dignity, Human Rights and Political Regimes," *American Political Science Review* 80 (September 1986), pp. 801-17; Jack Donnelly and Rhoda E. Howard, "Assessing National Human Rights Performance: A Theoretical Framework," *Human Rights Quarterly* 10 (May 1988), pp. 214-48.
5. Rhoda E. Howard and Jack Donnelly, "Introduction," in *International Handbook of Human Rights*, pp. 1-28.
6. Ibid., p. 2.
7. The Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights

(1966); the International Covenant on Civil and Political Rights (1966); and the Optional Protocol to the latter covenant.

8. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations* (Ottawa: Supply and Services Canada, June 1986), p. 100; hereafter referred to as the Hockin-Simard Report.

9. See, for example, the Côté-Harper and Courtney Report, p. 90, paragraph 2.

10. Howard and Donnelly, "Human Dignity," pp. 808-09.

11. Côté-Harper and Courtney Report, p. 25, paragraph 81.

12. Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980), p. 52.

13. This is the view of senior officials of the Rockefeller Foundation, cited in the Côté-Harper and Courtney Report, p. 16, paragraph 50.

14. Canadian International Development Agency, *Annual Report 1985-86* (Ottawa: Supply and Services Canada, 1986), p. 38; and Kim Richard Nossal, "Les droits de la personne et la politique etrangère canadienne: le cas de l'Indonésie," *Études internationales* 11 (June 1980), 223-38.

15. *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Supply and Services Canada, September 1987), p. 50.

16. Hockin-Simard Report, p. 16.

17. Rhoda E. Howard, "Black Africa and South Africa", in *Human Rights in Canadian Foreign Policy*, ed by Robert O. Matthews and Cranford Pratt (Montreal: McGill-Queen's University Press, 1988).

18. *Canada's International Relations: Response of the Government of Canada to the Report of the Special Joint Committee of the Senate and the House of Commons* (Ottawa: Supply and Services Canada, December 1986), p. 75.

19. Renate Pratt, "International Financial Institutions," in Matthews and Pratt, *Human Rights in Canadian Foreign Policy.*

20. *Canadian International Development Assistance*, p. 56.

21. Ibid. The recommendation is in *For Whose Benefit? Report of the Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs* (Ottawa: Supply and Services Canada, May 1987), p. 31; hereafter referred to as the Winegard Report.

22. United Nations, *Resolutions and Decisions Adopted by the General Assembly during the First Part of its Forty-First Session, from 16 September to 19 December 1986* (New York: United Nations Press Section, Department of Information, Press Release GA/7463, 12 January 1987), p. 366. For my views on economic rights and the right to development, see Rhoda E. Howard, "Economic Rights, Development and Foreign Policy," in *Human Rights and Development: International Views*, ed. by David P. Forsythe (London: Macmillan, 1988).

23. Rhoda E. Howard, "The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa," *Human Rights Quarterly* 5 (November 1983), pp. 467-90.

24. The term is from Paul Sieghart, "Economic Development, Human Rights—and the Omelette Thesis," *Development Policy Review* 1 (May 1983), pp. 95-104.

25. Howard, "The Full-Belly Thesis," p. 477.

26. Hockin-Simard Report, p. 104.

27. Jack Donnelly, "Human Rights and Development: Complementary or Competing Concerns?", *World Politics* 36 (January 1984), pp. 264-275.

28. Howard, "The Full-Belly Thesis," pp. 482-87.

29. Howard, *Human Rights in Commonwealth Africa*, p. 110.

30. *Canadian International Development Assistance*, p. 56.

31. Donnelly and Howard, "Assessing," p. 215.

32. Shue, *Basic Rights*, pp. 75-6.

33. Hockin-Simard Report, p. 104.

34. Côté-Harper and Courtney Report, p. 25, paragraph 79.

35. Robert Justin Goldstein, *Political Repression in 19th Century Europe* (Totowa, N.J.: Barnes and Noble, 1983).

36. Côté-Harper and Courtney Report, p. 91, paragraph 6, and p. 92, paragraph 11.

37. Winegard Report, p. 28.

38. The English reference for the Norwegian Report is Tor Skålnes and Jan Egeland (eds.), *Human Rights in Developing Countries 1986* (Oslo: Norwegian University Press, 1986).

39. *Canadian International Development Assistance*, pp. 50, 52.

40. Judith Innes de Neufville, "Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports," *Human Rights Quarterly* 8 (November, 1986), p. 691.

41. Hockin-Simard Report, p. 104. For an example of such assistance, see the Côté-Harper and Courtney Report, p. 91, paragraph 4.

42. Howard, *Human Rights in Commonwealth Africa*, pp. 140-44.

43. Government of Canada, News Release no. 210, "Establishment of the 'International Centre for Human Rights and Democratic Development' " (November 13, 1987).

44. Côté-Harper and Courtney Report, p. 24, paragraph 78, and p. 27, paragraph 89.

45. Ibid. pp. 93-95.

46. Ibid. p. 17, paragraph 54.

47. R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press in association with the Royal Institute of International Affairs, 1986), p. 146.

48. Hailu Lemma, "The Politics of Famine in Ethiopia," *Review of African Political Economy* 33 (August 1985), p. 52; and Robert M. Press, "Marxist Rulers Weed out Blighted Farm Policies," *Christian Science Monitor* (December 21-27, 1987), p. 11.

49. Côté-Harper and Courtney Report, p. 91, paragraph 5.

50. *Canadian International Development Assistance*, p. 53.

51. Côté-Harper and Courtney Report, Appendix C, pp. 90-96.

52. Ibid., p. 27, paragraph 86.

53. Rhoda E. Howard, "Legitimacy and Class Rule in Commonwealth Africa: Constitutionalism and the Rule of Law," *Third World Quarterly* 7 (April 1985), pp. 341-44.

54. Côté-Harper and Courtney Report, p. 94, paragraph 24.

55. Anonymous, *In/Dependent Kenya* (London: Zed Press, 1982), p. 55.

56. This paragraph is based on Howard, "Law and Economic Rights," pp. 615-20.

57. *Canadian International Development Assistance*, p. 53.

58. *Canada's International Relations*, p. 66.

59. Hockin-Simard Report, p. 99.

60. Howard, *Human Rights in Commonwealth Africa*, p. 12.

61. Côté-Harper and Courtney Report, pp. 21-23.

62. Hockin-Simard Report, p. 103.

The International Centre for Human Rights and Democratic Development: Notes on Its Mission

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Robert Miller

Résumé

Le Parlement du Canada a adopté en août 1988 une loi créant le Centre international des droits de la personne et du développement démocratique (CIDPDD). Dans cet article, l'auteur qui a travaillé à titre de conseiller pour le comité parlementaire ayant recommandé la création du Centre, propose de définir quel devrait être son mandat.

L'article décrit l'opposition qui a surgi lors des discussions menant à la création du Centre entre d'un côté, les tenants des droits de la personne, et de l'autre, les tenants du développement démocratique. L'auteur soutient que, plutôt que de chercher à éviter les affrontements, le Centre devrait les aborder et tenter de les résoudre par l'approche dite "démocratie et justice sociale" qui chercehe à promouvoir la participation des peuples les plus faibles et les plus pauvres au développement démocratique.

Avec cette approche en tête, l'auteur recommande que le Centre établisse un programme pour l'Amérique centrale qui aiderait les pays de cette région à réaliser les réformes démocratiques auxquelles ils se sont engagés par la signature du Plan de paix Esquipulas. Il suggère que le programme prévoie : le soutien aux institutions et critères régionaux; la démocratie pour les moins bien nantis; et la participation au développement. Il conclut en exhortant le Centre à mettre en pratique ce qu'il prône, en étant ouvert dans ses débats internes et en poursuivant son mandat avec courage et imagination.

Introduction

With the passage of legislation in August 1988 to establish the International Centre for Human Rights and Democratic Development (ICHRDD), Canada's international human rights policy is about to enter a new and potentially more creative period. The centre offers the promise of a more active and constructive Canadian human rights policy. Canada will do more than pass judgement on the human rights records of other countries; it will also try to help strengthen practices and build institutions that provide some protection for those rights.

The centre's promise, however, requires a human rights development strategy and a statement of mission for ICHRDD. Those are tall orders. It is difficult enough to agree on a definition of human rights, let alone devise a strategy for their development; moreover, the field of human rights is strewn with many ideological traps. In these circumstances, the first board of directors may be tempted to avoid trying to set a long-range course, preferring instead to get on with the "practical business" of devising programs and allocating budgets.

Unfortunately, that sensible way of doing things might reduce the centre right at the beginning to confusion, sterility, and irrelevance. Without a clear and compelling statement of mission, ICHRDD might become just a funder of competing conventional wisdoms, a human rights ambulance chaser in pursuit of the latest cause. Conversely, with a mission of its own, the centre can become a source of fresh thinking and a catalyst for practical Canadian assistance in human rights and democratic development.

The value of ICHRDD will depend on its commitment to think through what it wishes to be and do. These notes are intended as a contribution to carrying out that task.

Starting Points

The need for a statement of mission arises from the fact that the purposes of the centre, as set down in the act of parliament creating it, are broad and diverse. Nonetheless, the legislation and some of the thinking behind it provide our starting points.

The first thing to note is that the International Bill of Human Rights is the touchstone of the centre's mandate. The objects of the centre, as described in the legislation, are to undertake various activities "that give effect to the rights and freedoms enshrined in the International Bill of Human Rights, including, among those rights, the right to an adequate standard of living, the rights of persons not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the rights of freedom of opinion and expression and the right to vote and be elected at periodic, genuine elections in pluralistic political systems." These and the many other rights enshrined in the bill suggest why allegiance to international human rights is not, by itself, sufficient to provide the centre with a clear mission.

It is, however, a big step in the right direction. In citing the international bill, the legislation makes clear that the establishment of the centre is not intended by Canada as an act of ideological imperialism. It is not a thinly disguised attempt to set ourselves up as judges of other countries or exporters of Canadian values and institutions. Quite the contrary, the legislation identifies Canada with an international rather than a bilateral or national approach to human rights. The centre's purpose is to provide Canadian resources and experience in helping to achieve widely-recognized, though often unrealized, international obligations.

The centre is also to work in support of the full range of rights set down in the international bill, that is to say, economic, social, and cultural rights as well as civil and political rights. This may seem somewhat redundant in that the Canadian aid program already attempts to support the economic and social development of Third World countries and peoples. It should be recognized, however, that civil and political rights are often prerequisites for the achievement of economic rights. In a 1987 submission to the House of Commons Standing Committee on External Affairs and International Trade (SCEAIT), Dr. Susan Zurbrigg of Halifax drew on her experience as a health care worker in rural India to illustrate this point:

> To be effective, medical technology has to be accompanied by very basic changes in the economic precariousness of the poor majority, working conditions, wages—not high wages but just wages that will provide minimal calories for a family. The link to human rights is that unless there is some manoeuvring room for villagers to press for some accountability within the overall economic and political situation, those more fundamental socio-economic changes will not occur. As a result, the dollars we send in medical aid will be essentially wasted.

The notion of "human rights development" is the other important starting point in defining the mission of ICHRDD. In its 1986 report *Independence and Internationalism*, the Special Joint Committee on Canada's International Relations made a distinction between human rights "protection" that seeks to expose and to punish the violators of human rights and human rights "development" that tries to improve the underlying conditions that give rise to those violations in the first place. The committee acknowledged that the methods appropriate to human rights protection—international monitoring and sanctions of various kinds—remain absolutely essential, but went on to say that these should be supplemented by cooperative human rights development programs as well, consisting of financial support, exchange programs, research, and technical assistance. To quote the report: "Canada should contribute to the long-term development of political, civil and cultural rights as it now contributes to long-term economic and social development through the aid program."

Human Rights vs. Democratic Development?

International in its orientation, inclusive in its mandate, and developmental in its approach, these starting points take us some way towards defining the role of ICHRDD. But the centre also confronts a major stumbling block which, if not overcome, will slow it down and make very difficult the development of a coherent and challenging mission. Here we refer to the uneasy relationship between the two sides of the centre's mandate, human rights and democratic development.

Following the government's acceptance in principle of the parliamentary committee's recommendation that it establish an International Centre for Human Rights and Democratic Development, the secretary of state for external affairs appointed two rapporteurs to provide advice on how the centre should be set up. After extensive consultations, the rapporteurs issued a report, in 1987, that strongly supported the concept of the centre but took exception to the term "democratic development," recommending instead that the organization be called the International Centre for Human Rights and Institutional Development. The government chose to ignore this advice, but it is worth considering why it was offered in the first place.

The rapporteurs wrote that many witnesses had warned them that the word democratic had "acquired an ideological, political and cultural meaning which differs profoundly from one region of the world to another," and that its use runs the risk of "being interpreted as an intention to impose on our cooperative programs in this area our own concept of democracy." They went on to say that others feared that democracy would "be perceived as indicative of the philosophy of the present USA [i.e., Reagan] administration." If these objections can be boiled down into a single proposition, it would seem to be this: the variety of democracy is so great that it makes impossible, or unacceptable, the sharing of democratic experience. Is this so?

It is true that the word democracy is used and often abused in many different ways around the world, although surely the same is true of the term human rights. It is also clear that the institutional expressions of democracy vary enormously and that it would be a great mistake to confuse any particular system with democracy itself. But democracy also has a common, widely understood meaning—government effectively under the control of the people. Such essential elements of democratic government as freedom of speech and assembly and periodic and genuine elections, are contained in the International Bill of Human Rights and referred to in the legislation creating the centre. In short, there would seem to be about as much agreement around the world on what constitutes democracy as on any other aspect of human rights.

If that is true, what are the risks of the centre imposing "our own [i.e., Canadian] concept of democracy" on its cooperative programs? Unquestionably, there is some risk because we all tend to assume that our institutions and practices are the best way of doing things. But we run this risk in every area of international development, be it economic, social, scientific, or cultural. Canadians like to believe that they have been partially inoculated against cultural arrogance by the experience of fending off the embrace of their American neighbours, but the best curb on Canada running a democracy export business is the freedom of the rest of the world not to buy. Even if we wish to, Canadians rarely have the power to overreach themselves.

That brings us back to the last objection to the word democratic cited by the rapporteurs, that its use "will be perceived as indicative of the philosophy of the present USA administration." This may seem a passing problem, but in fact it is close to the heart of what many fear in the term democratic development. Former President Reagan, as part of his broader foreign policy goals, tried to mobilize the world in a crusade for democracy. The crusade had its overt and peaceful elements (for example, the establishment of the National Endowment for Democracy), but it had less overt and less peaceful elements as well, most notably the funding and managing of the Nicaraguan contras, a.k.a. the "freedom fighters." In the eyes of many who were not moved by the wisdom or the rightness of these latter policies, Mr. Reagan's crusade amounted to hijacking the word democracy for geopolitical goals.

So one is obliged to ask: Is democratic development just a modern, dressed-up version of gunboat diplomacy? Is it inherently interventionist and hostile to cooperation in international relations? It is not, although the Reagan legacy does put one on guard. The spirit of democracy points in quite a different direction, to the principles of self-determination and non-intervention in international affairs; and certainly, those are the principles that should guide Canada's own approach to democratic development. In practical terms, this means that requests for assistance should originate with people in developing countries, who should also determine the extent and forms of the assistance. Cooperation in democratic development also means that all programs should be open to public view and debate, in both the recipient countries and Canada.

This approach takes us some way towards reconciling human rights and democratic development, but substantial problems remain. The Centre for Human Rights and Democratic Development is situated on an old and deep intellectual fault line where two sets of values meet, the values of individual freedom and social equality. On one side of the line are those who associate human rights with the basic needs of the poorest people and with an agenda of economic justice and reform. For many of these people, Third World democracy is far too often a sham because it is controlled by traditional elites and serves to protect the *status quo*. On the other side of the fault line are those who see democratic development as the only means of social and economic reform that avoids revolution. They see this possibility as threatened from the right by those who are opposed to reform, and from the left by those who want solutions now to economic and social ills regardless of the consequences for civil and political rights.

Given these divisions, there is a risk that ICHRDD's programs will be developed in two quite separate and distinct spheres, the one emphasizing institutional democracy (legislatures, electoral systems, the judiciary and so on) and the other human rights focused on the needs of the poorest people, or what might be called popular democracy. This would be unfortunate, because either of the two tendencies without the other is dangerously incomplete. Institution-building can settle into complacent, legalistic tinkering that promotes democratic facades without much substance. Popular democracy, on the other hand, may mobilize people without strengthening the institutions and practices necessary to protect their civil and political rights.

Just because each approach is incomplete, it should be a major goal of the International Centre for Human Rights and Democratic Development to build bridges between them. Rather than ignoring or trying to avoid the tensions between human rights and democratic development, the centre should derive strength from directly confronting and seeking to resolve these tensions. For want of a better term, we could describe this approach as "Democracy and Social Justice," the thrust of which would be to facilitate the participation of the weakest and the poorest people in democratic development. To illustrate how this might be done, we turn to the case of Central America.

Democracy and Social Justice in Central America

There can be few areas of the world where the debate among the meaning of human rights and democratic development has been as intense or divisive as Central America, where it presents radically different versions of history and models of social and economic development.

On the one hand, there is the Nicaraguan model which describes itself as a revolution for economic and social justice, and thus a true democracy for the dispossessed. Its critics describe it as creeping totalitarianism masquerading as the champion of the poor, and charge that its real goal is the centralization of power not the emancipation of people. On the other hand, there is the Salvadoran model which its supporters describe as reform through electoral democracy and defend as the only alternative to repression and revolution. Its critics are less generous. They charge it with fraud, the intent or at least the result of Salvador's sham democracy being the effective continuation of military rule, large scale human rights abuses, and economic exploitation of the poor.

Until recently, there seemed to be little or no middle ground between these positions, or, if there was, it amounted to an ideological and political no man's land where people ventured at their peril. In those circumstances, there were few practical opportunities for bridging the differences, and certainly no opportunities which were attractive to a country as cautious in its foreign policy as Canada. What emerged instead was a two-track Canadian policy, with the government trying to be "evenhanded" in providing some aid to all countries (and therefore to all models of development) in the region, and the NGO community voting overwhelmingly for the Nicaraguan model while recommending an official Canadian boycott of the Salvadoran.

There is at least a hope that this utterly polarized situation is beginning to change. In Nicaragua the revolution may maintain itself in power, but it is presiding over an economy and society collapsing into ruins. Reconciliation of the ideologically irreconcilable begins to seem necessary to all sides, save the most extreme. In El Salvador, the spectre of unending civil war has begun to concentrate minds on the possibility of a negotiated settlement. In these circumstances, Canada can begin to make a greater contribution to helping Central America bridge the gulf between institutional democracy and social justice.

The Special House of Commons Committee on the Peace Process in Central America recommended, in 1988, that the government of Canada seize the opportunity, risky as it may be. The committee saw the combination of development, democracy, and peace in the Esquipulas II Agreement as the most promising, indeed the only, way ahead for Central America. As the title of the committee's report—*Supporting the Five*—makes clear, it is a road down which all five of the countries that signed the agreement must travel together. Virtually all of the committee's recommendations for Canadian and international assistance pointed to the need for expanding regional dialogue and cooperation in Central America.

Supporting "the five" means, implicitly, that no model of development in Central America is seen as providing all the answers. It also means that no model of development is excluded from the dialogue; the Reagan administration, with its "four against one" policy, had tried so hard to exclude Nicaragua. The conclusion follows: the Central American debate about human rights and democracy, and the search for solutions, must continue. That points to the work of ICHRDD in the region.

An Esquipulas Program

As the special committee was preparing its report on Central America, the legislation to create ICHRDD seemed to be stuck in political limbo, written but not introduced in the Parliament and in danger of disappearing into the approaching storms of a federal election. The members of the committee were convinced that the centre could play an important role in Canadian policy towards Central America and so recommended that "the legislation be introduced expeditiously." The committee also recommended that the centre's board of directors establish an Esquipulas Program "designed within the framework of Esquipulas II to provide practical assistance for human rights and democratic development in all five countries. Particular attention should be paid to the development of women's rights." The committee did not spell out the details of such a program, but having regard to the principles on which ICHRDD was founded and what we have said earlier about democracy and justice, an Esquipulas Program might look something like this:

1) Regional Institutions and Standards

Central America has a long and unhappy history of receiving unsolicited advice from the outside world, followed by coercion. The Esquipulas Agreement expresses the desire of many Central Americans to manage their own affairs. Canada is given considerable credit in the region for recognizing and supporting that desire, and for being sensitive to the needs of Central Americans as defined by Central Americans. ICHRDD should give expression to that approach by strongly supporting the development of regional human rights institutions and standards.

The House of Commons committee saw a special opportunity to do this by supporting the development of a Central American Parliament. As provided for in Esquipulas II, the parliament is intended to serve as a forum for legislators from all five countries, but not as a replacement for national legislatures. While lacking legislative clout, it is hoped that the parliament will advance the debate about alternative models of social and economic development and, in particular, human rights and democratic development. Looking further ahead, it is seen as the embryo for institutions, such as a Central American Court for Human Rights, to strengthen region-wide human rights practices and standards. Elections to the parliament could serve as a model for free and fair elections in the individual countries.

The initiative to create the parliament has progressed very slowly, and there is little that outsiders can do to speed things up, beyond words of encouragement. In the meantime, ICHRDD should promote the goals for which a parliament would be created by encouraging the formation of regional human rights networks. To some extent, the human rights movement has fallen victim to the polarization of Central American politics, as evidenced by the proliferation of governmental and non-governmental human rights commissions reporting very different versions of the human rights reality in the region. While not entirely avoidable, this politicizing of human rights can, if carried too far, destroy the credibility of human rights monitoring. ICHRDD could address this problem by sponsoring region-wide workshops and courses to debate, define, and develop human rights standards. In time, the networks so developed might have the capacity to investigate allegations of unfairness or bias in the work of human rights organizations.

The same regional orientation should inform the centre's approach to election-observing. While it remains important to send international teams to observe elections, ICHRDD should concentrate on the development of this same capacity within the Central American region, with the observer teams made up of nationals of the five Esquipulas countries. The centre should also support the development of Central American standards and procedures for election-observing.

2) *Democracy for the Poor*

The holding of "free, fair and honest elections" in the five signatory countries is a key provision of the Esquipulas II Agreement, and at the same time a matter of bitter contention in several Central American countries. During the 1970s and early 1980s, opposition political parties and popular organizations in Guatemala and El Salvador were attacked brutally by the military and death squads; their leaderships and memberships were decimated. As a result, it is charged that recent elections in those countries have been held in an atmosphere of tacit if not outright terror, a fact which together with sheer danger led the democratic left to boycott elections for some time. In the case of

Sandinista Nicaragua, there has been no comparable degree of repression associated with elections, but critics say that there has been a systematic campaign of more subtle intimidation and coercion by the government that renders elections fundamentally unfair. Here too, the opposition, or parts of it, has chosen to boycott the process.

Recent developments suggest that Central Americans across the political spectrum may be willing to give elections yet another chance. In El Salvador, social democratic party leaders associated with the FDR-FMLN have returned to the country from exile to participate in the 1989 presidential elections, and the FMLN itself has indicated a willingness to participate on certain conditions. In Nicaragua, the Sandinistas have committed themselves to an accelerated schedule for presidential elections, and to sweeping new guarantees for opposition participation. ICHRDD should do what it can to sustain this precarious revival of hope in electoralism by encouraging the regional monitoring of elections, as suggested above, and by supporting the effective enfranchisement of the poor.

What that means, simply, is that there is more to elections than the marking of ballots. Elections can be technically proper and efficiently run and yet occur under conditions that seriously compromise, if not entirely destroy, their legitimacy. When that happens, elections become part of a country's problems, not part of the solution. While it is true that elections can discriminate against any part of the population, in Central America they are far more likely to work against the interests of the poor. In most countries, *los pobres* (the poor) are less likely than the more affluent and better educated to participate in the electoral process, but this has very special significance in countries where a large proportion of the population is desperately poor. If ICHRDD wishes to support the consolidation of democracy in Central America, it should concentrate on supporting effective participation of the poor in democracy.

There is no simple, safe, or quick way of achieving that goal, although certainly part of the answer must lie in providing greater protection for the organizations—cooperatives, unions, and associations—that represent the poor. Peace Brigades International, for example, offers protection by supplying volunteers to accompany, 24 hours a day, human rights workers, union members, and others whose lives are threatened. It should be the highest priority of ICHRDD to support activities of this kind that aim to make electoral democracy a viable option for the poor. In this way, Canada will recognize the importance given to elections by the Esquipulas Agreement.

3) *Participation in Development*

Inequality is not only economic and political. It is also cultural, part of the social fabric. The economic exploitation that is visited on whole classes of people by society is often passed on in the form of exploitative personal and family relationships that further victimize the weakest and most vulnerable members of society. Here we speak especially of women and children in Central America.

In his report, *The State of the World's Children 1989*, the director-general of UNICEF lists "seven sins" of development, including development without participation and development without women. He notes that the women of developing countries are responsible for producing and marketing most of their crops; and that they carry the main responsibility for food preparation and home-making, for water and fuel, for nutrition and health care, and for the education of the young. Yet "in development assistance efforts to date, most of the education and training, the technology and the inputs, the investments and the loans, have gone to men." The inequality facing women in Central America is as severe as anywhere in the world, buttressed as it is by powerful cultural traditions.

What can ICHRDD do about such situations? First of all, it should demonstrate its understanding that human rights is an essential part of development, not a separate field of activity. Likewise, it should show its concern for the democracy of everyday life as well as the democracy of the ballot box. But how? The main responsibility for carrying out Canada's policies in support of economic development lies with CIDA. In recent years the agency has raised the priority given to the poorest people, to participation, and to women in development. Nonetheless, because development agencies have a multitude of competing and changing objectives, ICHRDD should develop a watching brief to help defend those priorities. ICHRDD should interest itself in the full range of Canadian aid activities in Central America to see that they remain, or become, supportive of participation in development. Similarly, the centre should be open to funding projects from "developmental NGOs" as well as "human rights NGOs."

Conclusion

In drawing these notes to a close, we would first repeat the central message: it is vitally important for ICHRDD to have a mission and equally important for that mission to draw together the two sides of the centre's mandate, human rights and democratic development. We have suggested what a "Democracy and Social Justice "program might look like in Central America.

There are two other points that we would like to make. The centre's mission outlined here will not be the only one proposed by its friends, or its enemies for that matter. With the establishment of ICHRDD, the debate about its future will just begin. Particularly in the first months, the discussions of the board of directors should go to the heart of questions about ICHRDD's mission. As soon as possible, the centre should establish a newsletter that reports candidly on these discussions and invites the comments of readers. In this way, the centre can practise what it means to encourage in others.

Finally, a comment on risk. Once the centre defines its mission, it should be pursued with courage and imagination. A major goal, as stated in the legislation, is to "help reduce the wide gap that sometimes exists between the formal adherence of states to international human rights agreements and the actual human rights practices of those states." In other words, the centre will seek to support only those things to which states have already declared their commitment, but it would be naive to assume that those states will invariably welcome ICHRDD with open arms.

Section 6(2) of the centre's legislation says that it can carry out its activities "in any jurisdiction outside Canada to the extent that the laws of that jurisdiction permit." That creates a gray area and leaves considerable discretion as to how much risk the centre can or should run. Whatever the answer, we think that ICHRDD should run more risk that diplomats are willing to run, which is why ICHRDD was created at arms-length from government in the first place. The point here is not to be bold or reckless, but to recognize that human rights development is inevitably a disturber of the *status quo*. Otherwise, why is it needed at all? It would be well, therefore, for the board of directors to buckle themselves in and prepare for the occasional spell of turbulence. They may be consoled by the words of an anonymous writer: "That which most of all calls forth our noblest capacities into action is always a hazard of some kind, never a certainty. It is when we are ready to stake our lives on something, or to make something so that is not so, that nobility begins to appear in human nature."

VI.

Canadian Parliamentarians on Human Rights

Résumé conjoint

Les trois articles de cette partie prolongent le débat sur les droits de la personne en direction des programmes d'aide du Canada. Les thèmes principaux en sont le rôle et l'efficacité des commissions parlementaires, abordant la question: le processus législatif doit-il être public ou secret, ainsi que les difficultés que pose le fait de rendre l'aide au développement conditionnelle au respect des droits de la personne.

L'honorable Jim Manly (NPD) soutient que le développement ne peut survenir dans un climat de répression et souligne l'importance de rendre visible publiquement les violations aux droits de la personne. De plus, il indique quelques faiblesses des programmes d'aide du Canada. D'abord, l'aide ne se rend pas toujours aux groupes les plus démunis. Ensuite, accorder de l'aide à des pays qui violent les droits de la personne est un geste contradictoire qui mine la crédibilité de tels programme. M. Manly reconnait des difficultés dans le fait d'utiliser les programmes d'aide comme moyen d'améliorer le respect des droits de la personne mais il demeure critique quant au secret dont le gouvernement entoure sa politique des droits de la personne.

L'honorable André Ouellet (Lib.) explique brièvement comment s'est élaboré le lien entre l'aide étrangère et les droits de la personne, dans la foulée des récents rapports parlementaires et gouvernementaux. Il renvoit à la notion de "modèle de violation systématique, flagrante et continuelle des droits fondamentaux de la personne" comme principal critère d'évaluation afin de guider les politiques canadiennes. Il aborde aussi la question des droits de la personne en lien avec l'établissement des politiques des principales institutions financières multilatérales. M. Ouellet défend l'idée qu'il faut nous doter d'une grille de classification et assurer la révision par le Parlement, sur une base annuelle, de la situation des droits de la personne dans les pays récipiendaires de l'aide canadienne. Enfin, il critique la dissimulation dont fait preuve le gouvernement, ses méthodes *in camera*, face à la question de l'aide et des droits de la personne.

Le Dr William Winegard (Cons.), ancien président du Comité permanent des Affaires étrangères et du commerce extérieur, se penche sur les commissions parlementaires en général de même que sur l'impact du rapport du Comité permanent sur les programmes d'aide canadiens (*Qui doit en profiter?*).

Il indique que les recommandations de ce rapport visaient à s'assurer de ce que les droits de la personne occupent une place prépondérante dans les politiques d'aide. Il pense que le Comité a rencontré trois objectifs importants. Premièrement, le gouvernement a formellement reconnu l'existence d'un lien entre les droits de la personne et l'aide au développement. Deuxièmement, le personnel de l'ACDI va recevoir de la formation sur les droits de la personne. Troisièment, il y aura décentralisation croissante des programmes d'aide au profit des activités sur le terrain.

Quant à la question de la transparence politique, le Dr Winegard adopte une attitude moins critique que celle de ses collègues parlementaires. Bien qu'il souligne le rôle que peuvent jouer les commissions parlementaires afin de s'assurer que les grandes lignes de la politique gouvernementale en matière de droits de la personne soient connues publiquement, il fait remarquer que les discussions *in camera* sur des pays spécifiques sont vitales pour que les membres du Parlement restent au fait des violations particulières aux droits de la personne.

Winegard on the Winegard Report and on Parliamentary Committees

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On December 6, 1988, Mr. David Gillies conducted a "human rights" interview in Montreal with Dr. William C. Winegard, then Chairman of the House of Commons Standing Committee on External Affairs and International Trade. Some 18 months earlier (in May 1987), the committee had published its study of Canada's foreign aid program. What follows is an edited narrative of the Winegard interview.

When the House Standing Committee on External Affairs and International Trade (SCEAIT) undertook a review of Canadian foreign aid, we paid special attention to the linkage of human rights and Third World development, and our recommendations were intended to strengthen this link. First, we were anxious to have people sensitized to human rights far more than they were: ordinary Canadians *and* government officials. For example, a CIDA officer going overseas has a lot to worry about. His responsibility for managing the project is a priority, and we felt that human rights could get lost in the shuffle. We wanted to raise the sensitivity of Canadian officials on this issue. Consequently, recommendations were focused on the idea that human rights must loom far larger in our external aid programs than it has in the past.

As a guide for both policy makers and our own work, we made a couple of proposals that addressed the difficult issue of evaluating the human rights performance of our aid recipients. There was a clear need for us to do so, because the committee felt good about providing aid to some countries but were more reluctant to do so in other cases. Over and over again, representations by a broad range of interest groups and concerned individuals stressed the poor human rights record of various governments and questioned whether our aid should be going there. We very quickly came to the conclusion that aid should never be just cut off. After all, our aid is meant to promote, not deny, development. But while we recognized that the poor and the oppressed should not suffer even more by the removal of our aid, we did agree that there may be occasions when government-to-government aid may need to be reduced. This would be in those situations where we judged that our aid was counter-productive—when it served more to prop up a bad regime than to promote development.

I should clear up some of the misunderstanding about our proposed "grid." In the first place, our suggestion was not cast in stone; we were not putting this forward as *the* model. It was simply an example—one scheme worth considering. But the idea of a grid did signal our conviction that with a little care and imagination, our aid could be conditioned on human rights; and also that it had the potential to be used as a carrot as well as a stick (according to whether one judged that conditions were improving or deteriorating). Second, it was never our intention to use aid as a crude weapon to impose our will upon others. We simply felt that matching aid to human rights was a matter of common sense. And it was in line with what we heard across the country.

And that brings me to a second major proposal in *For Whose Benefit?* We felt that an annual parliamentary review of the human rights record of our aid recipients was important, particularly those cases in which the Department of External Affairs, CIDA, and the committee had a special interest.

When the government responded to our report, it was very clear that they were not prepared to make things as public as we were. But I do not think that anyone on the committee was unduly disappointed by the government's rejection of the grid or the annual review; we more or less expected it. I think that we have seen the end of the grid. And I think that any government of the day, from whatever party, would have responded in the same way. This has nothing to do with philosophical differences among the parties, or even within the government. It has to do with the broader issue of Canada's role in the world. As I see it, Canadians still believe that our role is to be the peaceful mediator, working quietly to fix problems in the backrooms away from the public gaze.

And that, in essence, is how the government responded. While they heard our call for a more assertive diplomacy, they were not, in the end, prepared to alter Canada's traditional role. But despite these seeming setbacks, we did get some of the important things we wanted; we did get the acknowledgement that human rights had to be front and centre; that CIDA officers posted overseas were to be given some human rights training. The idea of periodic reviews of human rights issues was also acceptable to the government.

So while I think that the committee would have liked to see discussion of human rights made more public than it is now likely to be, we are reasonably content with the response. The visibility of international human rights has now been raised so high by the people of Canada that it will always be a salient issue for government. In that sense, the committee's work has been influential.

Another important issue for the committee was the question of human rights conditionality in the international financial institutions (IFIs). I believe that the whole Western world is becoming sensitized to human rights and environmental issues. There is a sensitivity that is growing literally month by month. And the IFIs will, I think, of necessity, begin to react to these things. The environment is perhaps a good example. You could not have imagined the World Bank caring very much until recently. It was simply not a priority. But their priorities are changing in response to changes in donor governments' priorities. The same thing will happen with human rights.

In our concern with human rights, the committee looked into issues not normally associated with Canadian aid; for example, the link between human rights and military exports. If I was to do it again, I would have separated our thinking on this issue into military weapons and military equipment. If we had done that, the government would have responded more favourably. Nevertheless, we were concerned that Canada not be caught exporting military weapons to the Third World—to countries with a terrible human rights record and a large budget for their military. This would not have made any sense, and it was not what Canadians wanted. But what you get thrown back at you from the Department of External Affairs and others is: "but what do you do about a country that must spend that kind of money on defence because it is in a civil war?" Unlike the case of Ethiopia, which simply throws people into trucks and moves them, there may be countries with large military budgets which try to help their people. Thus there is a grey area here; one that is greyer than I had initially appreciated. Nonetheless, I think that the thrust of our discussions was effective, and I do not expect to see Canada selling weapons to countries that deny their citizens human rights, or that have large military expenditures.

In the follow-up to *For Whose Benefit?*, our immediate concern has been to monitor the administrative decentralization of CIDA. Since the spring of 1988, we have had a series of meetings with the minister for external relations and the president of CIDA on this issue. And although human rights were mentioned, they were not the focus of our discussion. Decentralization was a priority for the committee because the whole thrust of the report is lost if you do not have people in the field with the freedom to make decisions based on their knowledge of local conditions. Decentralization even affects human rights. For example, CIDA field officers with the freedom to initiate projects, are also in the best position to judge when the human rights situation is deteriorating and whether projects need to be shut down.

But having raised the visibility of human rights and foreign aid, the breadth of our mandate demands that we turn our attention to new issues. I do not believe that it is the committee's job to second-guess government here. One ends up putting out fires all over the place. I do not think this accomplishes very much. What does get results, as far as the committee is concerned, is to undertake in-depth studies such as the aid study and the NORAD study. Our next study, to be conducted over the next 18 months or so, will examine the process of international trade development in Canada.

We intend, nevertheless, to revisit some of the issues covered in the aid report at least once a year, and this will include human rights. We have indicated this to the Department of External Affairs and to CIDA. You lose the value of a parliamentary committee if you do a report, make a big fuss, the government makes a big fuss, and then you wipe your hands of it.

In any event, there are human rights concerns well beyond the link with development aid. Members of the committee have visited Central America and the Middle East and have prepared two reports. Human rights issues were prominent in both cases.

This brings me to a larger point about the role and impact of the parliamentary committee. One of the things that has to be done – and I know that it is not popular with some—is to make committee members far better informed about what is going on in the world. And that will mean, of necessity, *in camera* meetings with officials, ambassadors, and senior officials at External Affairs. There is no question in my mind that if you want people to be brutally candid, you cannot have the media present. People say to us: "but you could make a fuss because you are so well respected." And I keep saying: "Sure, and after the tenth fuss, so what? Nobody will pay any attention to us. Just one more little dog yapping in the wind." You therefore have to walk that line—it is so marvellously Canadian—of trying to do what you can quietly in the backrooms.

This does create a problem. On the one hand, the committee must voice the concerns of ordinary Canadians, so we have a commitment to public discussion. On the other hand, we cannot be effective if we remain uninformed by government. But this is a dilemma that we have to endure. It is always an issue with defence, for example. The British and American defence committees are far more knowledgable, in my experience, than ours. This is because they are briefed *in camera* and are expected to keep their discussions *in camera*!

There are, however, two levels to this question of policy openness. While *in camera* discussions are valuable in giving officials an opportunity to speak freely, the government's broad position on the human rights record of country X or Y has to be public. This means that the committee still has the right to question, for example, why bilateral aid is still being sent to El Salvador. Note, also, the actual case of Ethiopia. We were concerned about the human rights conditions in that country, and about alleged abuses of aid funds. Accordingly, we asked the minister to come before us and give us an account of every single aid dollar that was being spent in the country. Despite this audit, we went on to suggest that bilateral aid should be cut off if the Ethiopian government did not change its ways.

But as I mentioned earlier, the SCEAIT has a big agenda and there is limited time to devote to human rights issues. This is where the new House Standing Committee on Human Rights can play an important role. While the exact link between the two committees is still up in the air, it is clear that to be useful the new committee must address international human rights. Although it has an important domestic mandate, it has looked at regional issues outside Canada—in Eastern Europe and the Middle East, for example. In any case, a purely domestic focus would not give the new committee very much to do. The instances of human rights violations in Canada—other than perhaps with the native peoples—are hardly of a kind that requires a separate standing committee.

As for SCEAIT, you are always going to have the human rights dimension in its work because of Eastern Europe. Perhaps every four years or so, we will look into the question of human rights in Eastern Europe; it would not be wise to separate the three baskets in the Helsinki process. Human rights should be linked to security whenever we talk to the Soviets.

It is not my job to set down the Human Rights Committee's terms of reference, but I do think that responsibility for international human rights belongs more naturally with that committee than with our own. Our role would be to voice concern about a particular issue, and if necessary to recommend a detailed study by the Human Rights Committee. Dr. Stackhouse, its first chairman, saw eye-to-eye with me on this. Unfortunately, he was defeated in the last election. But I hope that the new chairman will agree on this division of labour.

Within the Conservative party, there is no basic disagreement about the kinds of things that we have been doing in this area. Like other parties, we embrace a broad spectrum of opinion ranging from so-called "red tories" to those on the far right. But on the issue of human rights, everyone is convinced we are moving in the right direction.

There has been a great deal of progress on human rights issues during the time the Conservatives have been in power. It is difficult to know exactly what has brought this about. A lot of what has occurred would have happened anyway. The long history of Canadian involvement and concern has provided momentum. But Prime Minister Mulroney has also helped to speed things up in at least two ways. First, he himself has a major interest in the issue. That must come as a surprise to many, but it is clearly true nonetheless. Second, the willingness to encompass the McGrath Committee's recommendations on parliamentary reforms almost in their entirety is something for which he will begin to get credit in the House of Commons. For a prime minister to say in the House: "Your committees can study anything they want, you don't need a reference from me," will turn out to have been a very bold step.

Our review of the aid program, for example, was not done under government order. We simply decided that it was time to have a look at a program that accounts for 2 1/2 billion federal dollars a year. Our trade-development study will not be done under order either. At no time during our aid study did the prime minister or Joe Clark or Madame Landry or Madame Vezina ever ask me what we intended to recommend. Now that tells you something about how Brian Mulroney tries to run a government. This has not yet been appreciated, but ultimately it may be seen as one of his major contributions to the government of Canada. Thus while he did not change the direction of human rights policy development in Canada, he certainly speeded it up.

Canadian Foreign Aid and Human Rights: A Liberal Party View

André Ouellet

Je suis très heureux de participer à ce symposium organisé conjointement par le Centre d'étude sur les régions en développement de l'Université McGill et la Fondation canadienne des droits humains. Je félicite les organisateurs, en particulier les professeurs Julius Grey et Irving Brecher, de cette initiative.

As the theme of the symposium sets out very clearly, we, as concerned internationalists, must look on this fortieth anniversary of the adoption of the Universal Declaration of Human Rights not solely as a celebration, but as a chance to focus our eyes on new issues, and new approaches to furthering the cause of a body of human rights that has universal subscription.

One of the issues that has come to the forefront in the field of human rights promotion is the increasing tendency of states to use their official development assistance (ODA) as an instrument for strengthening governments with solid human rights records with much-needed development assistance, while denying such assistance to governments which flagrantly violate human rights.

As the entire aid and human rights question has evolved from the early stages of academic debate towards its more serious contemplation as part of ODA, certain key issues have arisen: the criteria for evaluating human rights violations; the denial of aid for political reasons; and, of course, the "double-penalty" dilemma which has also been dealt with in other debates on the use of economic sanctions.

Pour ma part, j'aimerais vous présenter la position du Parti libéral du Canada quant au débat sur l'aide au développement officielle et la promotion des droits humains.

J'aimerais, tout d'abord, faire référence à un discours prononcé par le chef de l'opposition à Vancouver, le 7 février dernier. Ceci montre, de façon très claire, l'importance que le Parti libéral met sur la promotion des droits humains et l'aide au développement.

J'aimerais le citer:

> Lorsque nous prenons des décisions en matière d'aide extérieure non-urgente, l'une des choses dont nous devons tenir compte est l'attitude des pays récipiendaires au chapitre des droits de la personne. Si je suis élu premier ministre, je renouvellerai l'engagement de mon gouvernement à accroître notre aide extérieure de 50% d'ici 1995, c'est-à-dire à en porter le niveau à 0.7% de notre PNB.

M. Turner l'a bien mentionné dans son discours. Nos deux priorités sont, dans un premier temps, l'établissement d'un lien entre l'aide au développement et les droits humains, et, dans un deuxième temps, une augmentation importante aux fonds d'aide au développement canadien.

Ceci dit, j'aimerais parler du débat tel qu'il s'est déroulé à Ottawa depuis l'arrivée au pouvoir du parti conservateur. Plus tôt, j'ai fait reférence à l'évolution d'une connaissance du lien entre l'aide au développement officielle et la promotion des droits de la personne. De la même façon, on a vu mûrir un débat très dynamique, débutant avec le livre vert intitulé *Compétitivité et sécurité* et se terminant avec le rapport du Comité permanent des affaires étrangères et du commerce extérieur, proprement connu comme le Rapport Winegard.

Beginning with the green paper,[1] the link between ODA and human rights was established by the following question: "Should our bilateral aid be made more directly conditional upon the performance of recipient governments in such areas as economic management, respect for human rights and political like-mindedness?"[2]

This question was pursued at length by the Special Joint Committee on Canada's International Relations (The Hockin-Simard Committee), which reaffirmed that human rights are a core objective of our foreign policy.[3] For the Liberal party, what was particularly interesting was the reference made to the attempt to draw up standards for human rights violations. Let me quote from the text of the final report: "The committee believes that a basic standard is available to trigger and guide Canadian human rights policy, namely, the appearance of a pattern of systematic, gross and continuous violations of basic human rights."[4]

This marked a vital first step in what our party believes should be the development of a policy based on a rational approach to detection and evaluation of human rights violations.

The government's response, *Canada's International Relations*, was much less enthusiastic about a set of guiding standards, not only for Canadian human rights policy in general but also for ODA policies in particular.[5] From the perspective of the Liberal party, the government did not go far enough. I would like to quote from its response to underline the need for the comprehensive set of guidelines the Liberal party is calling for:

> The government will, therefore, continue to proceed positively but carefully in harmonizing its development assistance and other human rights goals. Where human rights violations have become so massive and persistent that the delivery of effective development assistance becomes impossible, Canadian aid has been, and will be, suspended. In other less serious situations, aid is sometimes most effectively delivered through non-governmental agencies or through multilateral channels. In still others, where human rights violations do not prevent the successful mounting of development projects for the benefit of those in need of assistance, the government has continued to give bilateral aid and will do so in the future. Where countries have improved their human rights performance or where changed circumstances warrant encouragement, the government has sought to increase the level of development assistance flowing to them.[6]

The question of laying down a set of criteria for the evaluation of human rights abuses in countries receiving aid continued to be a source of concern for the Liberal party. We felt that there was room for expansion or elaboration of those guiding principles set out in the government's response to the Hockin-Simard Report.

In the wake of the Ethiopian famine, a decision was made by the House of Commons Standing Committee on External Affairs and International Trade (SCEAIT) to review Canada's Official Development Assistance.[7] During the course of committee hearings, the link between ODA and human rights was dealt with further, in an attempt to set down a comprehensive set of criteria for the evaluation and treatment of countries violating human rights. One group, the United Church of Canada, went as far as suggesting that the following questions be asked:

> First, does the civilian government have control over the military? Second, is the government of the aid-receiving country addressing the root problems of poverty and underdevelopment? More specifically, do they demonstrate the political will to do so? Are they in the position to do so practically and politically? Third, is there a continuation of human rights abuses? Are past abuses acknowledged and real redress attempted; for example, by the prosecution of those responsible? Fourth, what real difference in the life of the poor have the programs of the government made?[8]

This represented a constructive approach towards a comprehensive setting of criteria that, from the perspective of the Liberal party, is fundamentally important for a rational approach to effective ODA distribution.

The Winegard Report was a very positive step forward. For the Liberal party, its important recommendations included:

1. close consultations with Canadian NGOs in cases where human rights are in question
2. placing human rights concerns on the agendas of the international financial institutions
3. collaboration of CIDA with the Department of External Affairs in the prepartion of an annual ODA-human rights review.

We saw these as extremely useful steps in increasing awareness among Canadian decision makers and the public alike as to the nature and severity of human rights abuses in certain countries receiving Canadian aid.

Most importantly, pursuant to the need for a comprehensive "classification grid" the Winegard Committee recommended that CIDA undertake to elaborate a systematic approach to evaluating and designating specific countries as violators (or promoters) of human rights.

Voilà où nous en sommes tous rendus dans le débat public sur l'aide au développement et les droits de la personne. Nous avons maintenant la réponse du gouvernement au Rapport Winegard. Le document *Partageons notre avenir* est, je dois le dire, à certains égards décevant.[9]

Après une évolution progressive et dynamique de la question dans le public et au sein du Comité permanent des affaires étrangères et du commerce extérieur, la réplique du gouvernement nous montre qu'il ne veut pas élaborer cette question d'une façon claire et précise.

Le gouvernement préfère agir en cachette—et cela nous inquiète. Le gouvernement veut déterminer en privé—au sein du conseil des ministres, par quelles voies l'aide canadienne sera acheminée et à quel niveau l'aide bilatérale sera attribuée à chaque pays, et également à quel pays l'aide de gouvernement-à-gouvernement sera réduite ou refusée.

À notre avis, ceci démontre la volonté du gouvernement de mettre fin à un débat qui a pour but de rationaliser la distinction de l'aide avec les objectifs de notre politique envers les droits humains.

We recognize that any evaluation of the human rights performance of a potential recipient of Canadian ODA must be based on as objective a study as possible. To this end, we should strive to ensure that all levels of the decision-making process are encouraged to participate in an open process, instead of the secretive *in camera* approach of the government. Such an open process would help to enforce the observance of a basic set of human rights criteria; would prevent the denial of Canadian ODA for purely political or ideological reasons; and would increase public-sector, NGO, and other interest-group participation in addressing and assessing complex questions, such as the "double penalty dilemma," where fundamentally difficult decisions must be made on humane grounds. As the Rt. Honourable Leader of the Opposition aptly puts it, "human rights know no borders." Similarly, with respect to ODA, we in the Liberal party are also arguing that "human rights promotion knows no closed doors."

Under the government's approach, one can envision an unknown bureaucrat attempting to brief a potentially disinterested cabinet minister as to the human rights performance of a particular country. We prefer a more open process—a process that would enable us to draw upon the wealth of expertise and interest in the human rights community.

Notes

1. Department of External Affairs, *Competitiveness and Security: Directions for Canada's International Relations* (Ottawa: Minister of Supply and Services, 1985).

2. Ibid., p. 36.

3. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations* (Ottawa: Minister of Supply and Services, 1986).

4. Ibid., p. 100.

5. *Canada's International Relations: Response of the Government of Canada to the Report of the Special Joint Committee of the Senate*

and the House of Commons (Ottawa: Minister of Supply and Services, 1986).

6. Ibid., p. 25.

7. *For Whose Benefit?: Report of the SCEAIT on Canada's Official Development Assistance Policies and Programs* (Ottawa: Minister of Supply and Services, 1987).

8. Ibid., p. 24.

9. Canadian International Development Agency, *Sharing Our Future: Canadian International Development Assistance* (Ottawa: Minister of Supply and Services, 1988).

Canadian Foreign Aid and Human Rights: A New Democratic Party View

Jim Manly

I am pleased to take part in this symposium exploring the link between two of the most important problems facing our world: human rights and economic development. This also includes our concern for peace and ecological sanity.

I begin with a broad definition of human rights as suggested in the Winegard Report:

> Human rights should not be defined too narrowly or in isolation from the conditions for development . . . our concept of human rights should encompass individual, civil and political rights, as well as socio-economic and cultural rights. There are certain obvious minimum subsistence and security rights.[1]

Later, I will use a narrower definition of human rights in terms of civil and political rights. I want also to recognize my fallibility in this complex area. I am not always consistent. I have my biases—which is simply another way of saying that I am part of the human race.

The complexity of human rights issues can be illustrated by looking at the current controversy surrounding language rights of Quebec Francophones, a linguistic minority in Anglophone North America. Should Montreal Anglophones be perceived as part of the

North American majority or as an embattled minority within the larger Francophone minority?

We all know that maintaining language rights in Canada takes a good deal of money and political commitment. If this is the case in an affluent and stable society, how much more difficult must it be for newly formed nations still struggling with the divisive legacy of colonialism combined with the poverty of underdevelopment! No wonder that in October 1987, Amnesty International reported 33 of 40 Commonwealth countries guilty of serious human rights violations.

Recognizing this complexity and cost, I want to propose the following thesis: There is an integral link between human rights and development. The denial or violation of human rights impedes and at times prevents the process of development. *Therefore, human rights criteria are intrinsic to the proper disbursement of Canadian aid.*

The link between human rights and Canada's development assistance program is important for three reasons:

1. We need to maintain the *credibility* of our $2.7 billion aid program with the taxpayers who finance it. This is not to be equated with a self-righteous attitude, typical of older charity programs which were willing to help "the deserving poor" but not the "undeserving poor." Rather, it reflects a more basic understanding of aid as an expression of human solidarity; those who violate the rights of others violate that solidarity. Giving aid to violators is a fundamental contradiction.
2. The *safety* of Canadian development workers cannot be guaranteed in a climate of gross, systematic, and continuous violations of human rights. These Canadians are in danger, not only of getting caught in the cross-fire, but also of being targetted because true development activity—working to help poor people help themselves—is a threat to local power structures. If they have no respect for the lives and rights of their own people, they cannot be expected to respect the lives and rights of development workers. This was one reason for the withdrawal of Canadian aid from El Salvador and Guatemala in the early 1980s.
3. Development for ordinary people cannot take place in a climate of repression. I can only refer briefly to two examples: Haiti and South Korea.

   Long before the present crisis erupted in Haiti, Philip English, in a North-South study of ODA for Haiti, told how the rich had grabbed Haitian lands which had been improved through irrigation, reforestation, or road construction, paid for by development assistance.[2] Corruption and oppression robbed ordinary people of the direct benefits of this assistance and prevented it from having any multiplier effects.

> In his 1986 study, *Does Aid Work?*, Robert Cassen stated that Korea "has been in a very real sense a model user of foreign assistance."[3] Cassen's conclusion was that "by any standard of performance, South Korea overall is justly considered an economic success."[4] However, the Canada-Asia Working Group, in its report to the forty-fourth session of the U.N. Commission on Human Rights, gave the other side of the picture. The working group argued that the "economic miracle" of Korea "has been built on the depopulation and destruction of the agricultural sector, low wages, the longest work week in the world, frequent industrial accidents, depersonalization, the oppression of women and the suppression of labour unions."[5]

This brings us to the question: *What should be the goals of official development assistance?* In *Sharing Our Future*, the Government of Canada has set out a Development Assistance Charter with very commendable goals.[6] But these are only goals, whereas the Winegard Committee urged that the charter be enshrined in law so that the ODA program could be held accountable.

Having established a link between human rights and development, we need to ask: How *does* this link affect policy and how *should* it affect policy?

The Special Joint Committee on Canada's International Relations discovered that Canadians attached greater importance to human rights than the government appeared to do in its green paper. The committee quotes from the Canadian Council of Churches' brief: "The churches assume that all people everywhere, regardless of their ideological, cultural or political system, wish to be free from disappearance, from arbitrary arrest, detention, torture and extra-judicial execution and from state-sponsored discrimination."[7]

Perhaps the most powerful tool in protecting human rights is the exposure of abuse, since no government wants to be an object of international condemnation. Public criticism or sanctions which follow this exposure can also help bring reform. As the special joint committee said: "In blending human rights concerns with trade, diplomatic and aid discussions, Canada can convey the message that human rights are an integral, not a peripheral, part of its international relations."[8]

The committee further pointed out that Canada can also play a positive role in encouraging human rights: "Canada is not—and should not be—in the business of exporting its own institutions. It can and should be equipped to share its experience and to co-operate with others as they develop their own institutions."[9]

We commend the government for accepting the recommendation that Canada establish an International Institute of Human Rights and

Democratic Development, and we hope that plans for this proceed as quickly as possible.

The Winegard Report made a number of recommendations linking aid and human rights. Two in particular should be noted: "that . . . progress on human rights be considered part of development, with assessments of the human rights situation in a given country being related to the overall record of development, particularly from the vantage point of the poorest people"; and "that CIDA collaborate further with the Department of External Affairs in the preparation of an annual ODA-Human Rights Review to be tabled in Parliament and referred to this Committee and to the Standing Committee on Human Rights."[10]

Unfortunately, in its response, the government only partially accepted these recommendations: "the Government is of the opinion that it is difficult to establish strict theoretical criteria in the field of human rights which would be operationally effective in development policy"; and "the Government does not believe that annual reports to Parliament, in which concrete cases and situations are evaluated and judgments are drawn, would serve the foreign policy interest of Canada."[11]

Instead, human rights issues in recipient countries will be discussed in cabinet. As with all cabinet discussions, these will be *in camera* but the government would be willing to provide information to appropriate parliamentary committees, with the suggestion that these hearings also be *in camera*.[12]

Whatever else this hidden approach to human rights might accomplish, it will not bring to these issues the light of exposure and public opinion. Neither improvement nor deterioration in human rights performance will be noticed by the general public, and taxpayers will be left with some very basic questions about where their aid dollars are going. This approach is designed more to make life easy for External Affairs than to provide an effective human rights link for development assistance programs.

As I see it, this suggests that the government fears that the messy consideration of human rights will interfere with other goals of foreign policy. Nowhere is this more evident than in the case of Indonesia, which is one of the largest recipients of Canadian aid. Our large and growing trade with Indonesia has led Canada to ignore the illegal occupation of East Timor, a former Portuguese colony where up to one-third of the population has died since Indonesia invaded in 1975. Because of tighter army control in the area, the Canadian government accepts Indonesia's claim that human rights have improved.

Or we can look at Guatemala, where aid was resumed last fall on the eve of Joe Clark's visit to Central America—although the human rights climate continues to be abhorrent. While the major objective of

Mr. Clark's visit was to help the Central American peace process, we must ask whether this can be accomplished by resuming aid in the face of continuing human rights violations.

The government is right to say there is no simple relationship between human rights and official development assistance. For example, Ethiopia is a gross violator of human rights. But in the face of a long-standing civil war, we have to ask: does a state have the right to protect its territorial integrity? The underdevelopment which plagues Ethiopia is part of the legacy of feudalism, which lasted until the 1970s. The link between famine and ecological stress, the obvious need for some kind of resettlement program, and the coercion that has accompanied resettlement up until now, all point to the need for an open, frank dialogue between the Government of Canada and the Canadian people on the subject of aid to Ethiopia.

Whatever the pros or cons of the case for continued or increased aid, the government should involve the Canadian people in the debate. Remembering the difficulties we have with language rights in Canada, we need to note the difficulties faced by nations under siege or nations with disintegrating economies. It is at this point that we need to use the broad definition of human rights which I mentioned earlier.

Finally, I wish to make a few brief observations about Canada's role in the international financial institutions (IFIs) like the IMF and the World Bank, and about the effect this has on human rights. Here again there is a great need for accountability. For example, when the World Bank finances huge infrastructure projects such as dams, more consideration needs to be given to the human rights of people whose traditional lands are flooded. When the IMF imposes structural adjustment on developing countries—with forced devaluation, huge increases in the price of food, cutbacks in government services, and increased unemployment—this sometimes leads to demonstrations which are forcibly repressed, as was the case with Zambia. Who is responsible for the violation of human rights in this situation: the Government of Zambia, or the Western nations, including Canada, that dictate IMF policy?

While the Canadian government has promised to put human rights on the agenda of the IFIs,[13] we must do so much more vigorously than has been the case in the past.

In conclusion, recognizing that the relationship between human rights and development assistance is both central to the development process and also very complex, we can say that with some glaring exceptions like Indonesia, Canada does not have a bad record in trying to maintain that link. But we need a more open policy, so that the Canadian people as a whole cannot only be involved in the human rights dialogue but also be assured that human rights are not being ignored in our aid program. We also need to follow the dollars we give through multilateral funding agencies, to ensure that they too make human rights a determining factor in their decisions.

Notes

1. *For Whose Benefit?: Report of the Standing Committee on External Affairs and International Trade on Canada's Official Development Assistance Policies and Programs* (Ottawa: Minister of Supply and Services, 1987), p. 26.
2. E. Philip English, *Canadian Development Assistance to Haiti: An Independent Study* (Ottawa: The North-South Institute, 1984).
3. Robert Cassen and Associates, *Does Aid Work?: Report to an Intergovernmental Task Force* (Oxford: Clarendon Press, 1986), p. 357.
4. Ibid., p. 355.
5. Canada-Asia Working Group, *Human Rights in Asia*, Submission to the 44th Session of the United Nations Commission on Human Rights (Geneva, 1988), p. 18.
6. Canadian International Development Agency, *Sharing Our Future: Canadian International Development Assistance* (Ottawa: Minister of Supply and Services, 1988), p. 23.
7. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations* (Ottawa: Minister of Supply and Services, 1986), p. 100.
8. Ibid, p. 102.
9. Ibid, p. 104.
10. *For Whose Benefit?*, pp. 130-131.
11. *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Minister of Supply and Services, 1987), pp. 50, 54.
12. *Sharing Our Future*, pp. 31-32.
13. *To Benefit a Better World*, p. 56.

VII.

Human Rights in the Canadian Policy Process

Human Rights and Development: Reflections on Canadian Process and Policy

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Bernard Wood

Résumé

Cet article aborde quatre grandes questions : (1) l'opinion interne et internationale au sujet des droits de la personne; (2) l'intégration des droits de la personne à la politique étrangère du Canada; (3) la relation droits et développement; et (4) le mandat du nouveau Centre international sur les droits de la personne et le développement démocratique du Canada.

La puissance de l'opinion publique canadienne, la défense efficace des groupes de pression et du Parlement ainsi que les initiatives au plan international ont toutes fait en sorte d'élever les droits de la personne au niveau de question de politique étrangère importante.

Tout en reconnaissant que la fonction publique, parfois réticente, a été forcée à se confronter à la question des droits, l'auteur se demande combien d'ouverture et de transparence politique sont possibles dans un domaine aussi délicat. Il fait appel à une attitude plus coopérative et moins hostile de la part des groupes de défense et du gouvernement. Chacun doit reconnaitre plus clairement les intérêts et les contraintes de l'autre.

L'auteur souligne aussi le dilemme éthique contenu dans le fait de rendre l'aide au développement conditionnelle, en réponse aux abus aux droits de la personne. Pourquoi cela devrait-il être choisi plutôt que les leviers commerciaux, financiers ou diplomatiques? L'efficacité devrait être le test guidant le choix des instruments de politique. Le cas d'Haiti est cité comme exemple de débat stérile au sujet de la

cessation de l'aide alors que les programmes de l'ACDI dans ce pays avaient déjà été rendus à l'épreuve des dictateurs.

Se tournant vers le nouveau centre des droits de la personne du Canada, l'auteur suggère qu'il devrait développer comme spécialité de faire rapport sur la situation et peut-être même développer une grille d'évaluation. Le centre pourrait jouer un rôle vital dans l'élaboration des politiques extérieures du Canada en matière de droits de la personne.

I will try to address four major points in this paper:

1. What is the environment for human rights and foreign policy now in Canada?
2. What is the state of integration of human rights in our foreign policy, and why?
3. What is special about the link to development?
4. What are the possible messages for Canada's new International Centre for Human Rights and Democratic Development?

The picture that I see includes some strange bedfellows, some mixed signals, and some unintended consequences—and I will try to draw those out as I proceed.

I.

First of all, what is the *environment* in Canada with respect to human rights and foreign policy? What does the public think?—always important in a democracy. Some 86 per cent of Canadians think that human rights are a very important or important issue for our foreign policy. The North-South Institute's survey of public opinion in October 1987 found that 68 per cent believe that the government of Canada should protest strongly against violations of human rights in other countries, while only 29 per cent believed that the human rights performance of other countries was not our business.[1]

There is increasing persistence on, and increasing legitimacy to, human rights in our foreign policy. That is thanks to the advocates, some of whom have covered the waterfront, some of whom have been on the left and some of whom have been on the right. And it is thanks to the media, some of whom have been in each of those camps as well. Also important have been the U.N. and multilateral standard-setters, and the debates and investigations that have gone on and have legitimized these issues.

Governments of both left and right have played roles as well, and it is well worth noting that the legitimacy of human rights in foreign policy generally has been reinforced in some interesting ways by the CSCE exercise, by Helsinki, by Madrid, and by U.S. President Jimmy Carter. All of this to say that I believe we have seen an aggregation of many different pressures, many of them single-issue or single-side advocacies or concerns, but a kind of critical mass has begun to be achieved. Perhaps we have finally begun to approach an imperfect synthesis of human rights concerns in our foreign policy as a universal systemic issue or set of issues, rather than focusing only on selected cases.

People who have been concerned especially with human rights in Eastern Europe and people who have been concerned primarily with human rights violations under right-wing dictatorships in various parts of the world have become strange bedfellows. And together they have helped us to build a more coherent overall concern.

In all of this process of increasing the salience of human rights concerns in foreign policy, it is clear that a central role has been played by public exposure of situations of abuse abroad, and by public advocacy of foreign policy steps to respond. Rarely has this public debate been led by government (with more recent action on South Africa perhaps being an exception, as discussed below), and often government has been seen to resist and obstruct such discussion. In this field, the general predisposition of government to secrecy is compounded by the highly delicate character of the issues in international relationships and their highly emotional character at home. Many of those who have analyzed the linkages, including the parliamentary committees that have studied them in recent years, have laid great stress on greater openness and transparency in discussion of cases and of appropriate policy options to be applied. Most recently, the government balked at the performance-assessment grid proposed by the Winegard Committee, opting for a more limited form of performance reporting and policy debate, while also mandating a new centre which is undoubtedly expected to widen and strengthen public information and discussion.

Having contributed so much to today's level of acceptance of human rights issues in the foreign policy process, it may be that the advocates of ever-greater openness should take stock as to how far this openness can, or should, now go. One factor to be borne in mind is that a more comprehensive and evenhanded picture of human rights observance and abuse around the world shows that no country's record is perfect. Thus concerned and informed citizens have to come to terms with Canada carrying on relations at varying levels with governments which are abusing human rights in varying degrees. For most citizens, such a relativistic approach to what is seen as an absolute set of standards is likely to be uncomfortable, even repugnant, and could possibly undermine their confidence that pressing human rights internationally is worthwhile. The Winegard Committee's proposal to classify governments according to whether their observance records were improving, stagnating, or deteriorating, while fraught with difficulties, was clearly intended to promote a more realistic and constructive base of understanding among the public and policy makers. The building of that kind of base, without diluting the vital commitment to human rights advocacy, may now call for a more structured and cooperative approach to information and education. This would require less of an assumption of adversarial relations between advocacy groups and government, and less use of exposé and secrecy as their respective weapons.

We have seen as well—and this is another element reflected in the Winegard Report and in the government's response—that the sheer volume of concern has made a case-by-case or crisis-by-crisis approach unmanageable. It is also abusable because of its selectivity. I think MPs were aware of this, which is why they proposed more systematic approaches; ministers are aware of it and officials are certainly aware of it.

Since 1984, the most clear-cut major Canadian foreign policy issue of human rights violation has been South Africa. One finds an unprecedented level of activity, interest, discussion, and action in this country, and by our government. In late 1987, well after some new steps had been taken and when External Affairs Minister Joe Clark had raised the question as to whether or not we might be getting into a situation of "sanctions fatigue," a North-South Institute poll revealed (in response to a simple question about people's approval of what our government was doing in relation to the racial policies of South Africa) that only 10 per cent of Canadians thought that the government was doing too much, 40 per cent thought it was doing the right amount, and 37 per cent thought it was doing too little.[2] So there was a very strong, sustained public support on that issue—without a lot of concrete progress having been achieved. If people had hoped for a quick fix, they had not had that satisfaction, but it appears that their understanding was more sophisticated.

This linkage of human rights to foreign policy derives from a concern about seeing our basic values as a people encouraged in the international community. Politicians must and will reflect that concern, whether or not it causes discomfort to other governments. The idea of sovereignty is not automatically accepted as an absolute, as it sometimes has been in the past.

II.

What about *integration* into the mainstream foreign policy process? It is still highly imperfect—although it has advanced from the most limited past situation of compartmentalization, that is, one-track or sideline status. There is still resistance, it must be recognized, by our foreign policy professionals and others to the integration of what are considered traditionally to be internal affairs into the conventional framework of interstate relations. Sovereignty and non-interference, although weaker, are still the dominant conventions of international relations.

In that sense, it is normal and healthy that the public, NGOs, and political leaders are pro-active on human rights in foreign policy, and that our officials are reactive, although certainly no one would ever approve of officials being obstructive. This simply says that the politicians and the public are defining our direction as a country, and that is the way I always thought it was supposed to be. The professionals in this field do tilt towards precedent, towards convention. Their job, in part, is pointing out the costs and implications of ideas that come forward. Politicians who know how to use officials can find this very useful indeed, without being paralyzed by it.

In setting our policies, there is a balancing of interests and values. We are a very democratic country, we are a Western country, we are a capitalist or mixed-economy country, we are tightly linked with one of the superpowers. Those characteristics are reflected in our foreign policy, and one would be surprised if they were not. They shape our values and views on human rights, and are seen to do so by other countries. That may sometimes disqualify us from certain kinds of issues or activities, but it generally would not and has not. I would cite the South African role as one where accepted leadership by Canada among wide coalitions of countries testifies to the basic integrity of a position which transcends any such obstacles. It is, however, explicit in the Canadian position on South Africa that, in part, it is Western interests which we are defending and upholding. It is a Western interest morally, politically, and economically not to be, or be seen to be, on the side of *apartheid*.

There is, as well, an instinct in the policy process to try to balance the different voices that are heard. It is an incontestable fact that many biased or one-sided views have been put forward in the name of universal principles of human rights. Sometimes bureaucrats believe—and I think they rightly believe—that they have a responsibility, in their general advice to their ministers, to demonstrate where that is the case. It is time, as I suggested earlier, to move past the single cases, or the single-sided cases—from some of the ridiculous positions where we may even have found ourselves picking up a left-wing case to balance the right-wing case, or an anti-American case to balance a pro-American case. This is not a very edifying spectacle if what you are supposed to be talking about is human rights.

How? What levers do we have? How can they be made effective? These are serious questions. There are legitimate issues as to what your power is to intervene in somebody else's country in the name of human rights and make it effective. This area provides one of the biggest gaps between goals and the means in the international community to achieve those goals. Even the superpowers are constrained, and they should be. A wider consensus on restraining arbitrary power and abuse is hard to build on a multilateral basis. But perhaps it has been coming. I would suggest that the middle powers are not powerless at all in this field, but must be very strategic in how they exert their influence. There are legitimate questions about the merits of public or private pressure, or both; multilateral or unilateral action; government relationships or aspects of all relationships being drawn in; exposure, condemnation, sanctions, isolation, and wars, on the one hand and the possibilities of dialogue, contact, encouragement, and persuasion on the other. Which applies when, which is credible when?

III.

What are the *links of human rights to development*? Specifically, we should also clarify what we mean by "democratic development." In these discussions, I think that we have been plagued by mixed signals.

On other occasions, I have warned about the dangers for a country like Canada, of unfairly singling out human rights abuse in *less developed* countries for our attention and policy action.[3] In allocating our concern, we must resist the temptation to revert to old racially- and culturally-based categorizations of the "civilized" world, and also avoid the equally repugnant and patronizing assumption that "less should be expected" of developing nations. In adopting measures or pressures for greater human rights observance, there is still, for me, a serious ethical question raised by our greater readiness to use the instrument of development assistance than other official instruments of pressure in our relations with countries which do not receive our "aid." This is quite apart from the important question of targeting who is hurt by cutting aid, discussed further below. If, as we claim, aid is supposed to be provided on the basis of solidarity and long-term mutual interest, it is in no different a category of relationship than our trade or other links. On that basis, we should be no more or less ready to use it as a lever than we do official controls of trade, financial or other flows. The fact that reducing other linkages, with countries that do not receive our aid, may call for greater apparent sacrifice on our part does not reduce the importance of using such measures; to some, it would greatly increase that importance. In all such ethically-based debates, of course, the test of possible efficacy in actually improving human rights observance should be foremost.

What about the "special" linkages to development itself? First, it is worth keeping in mind that nobody gives development to anyone else, and nobody gives human rights to anyone else. People win these things, both of them.

Second, what is the definition of "development"? Increasingly, it has come to be viewed as the achievement of human rights in its widest sense. The question then arises as to which human rights are most important in the context of development. There has been a continuing debate about civil and political rights versus economic and social rights, and individual versus collective rights. As a developmentalist, I am convinced that it is unproductive and unnecessary to put various rights in a competitive relationship. I have seen no evidence whatsoever that there is intrinsic conflict among these rights. While differences in emphasis appear in different parts of the world, it is absolutely unhelpful to suggest a trade-off in relation to such rights.[4]

Development is empowerment, and that is not just a slogan. I would cite the work that the North-South Institute did on rural poverty in one country, where we went very deeply into the issue of why rural poverty persisted.[5] What we discovered, what we were able to demonstrate to ourselves, was that poverty goes well beyond the lack of resources. It relates to the lack of means to secure resources and services. Development, therefore, implies a radical shift of power within society. Rights are both an end and a mobilizing means towards that end. Development, in that sense, is fundamentally subversive in many of the countries of the world in which we operate—which is a very good and very important thing, but also quite a sensitive thing. Good aid is frequently about weakening bad government. The new Canadian strategy is supposed to build much more of this into our aid program. It is going to be up to all of us to make sure that it lives up to that difficult goal.

Let me refer to the Haiti case as an illustration of what to do and what not to do. It was highly destructive that the reaction to the disastrous, sabotaged election of November 29, 1988 was dominated by a fruitless and feckless debate for several key, critical days about whether or not our aid should be cut off, in a situation where our aid had essentially already been "dictator-proofed" in that country. When aid is going to the people, when you have taken those measures, that is no longer the issue. We lost some critical time where something useful might have been done. It has been said that "aid is the Aladdin's lamp" to stop human rights abuses in developing countries. Such a view both exaggerates and over-simplifies. We should keep in mind that, towards the end of his rule, "Papa Doc" Duvalier was receiving no aid at all and spending 65 per cent of the national budget on "security." The limits of repression can be tragically wide.

The Haiti case also revealed that even in a country where we have good information and important interests and where we have ample advance warning of a major, climactic breakdown in human rights, we as a society—and not just the government—are totally unprepared for a realistic, serious strategy of response. Almost all the various actors—advocacy groups, the government, the Haitian exile community, the media, and most of the development groups working in Haiti—were drawn into the largely pointless debate about aid eligibility. Meanwhile any chance for a forceful, concerted international campaign to reverse the coup and guarantee genuine elections slipped away. Given our interest and credibility, such a campaign could conceivably have been led by Canada. It would have had to be a total foreign policy effort with all like-minded countries and international organizations, and such a thrust would not have been centred in the aid agency. It still might not have succeeded, but it would at least have been a serious response to a once-in-a-lifetime chance for human rights and democracy in a terribly oppressed society.

IV.

What are the possible *lessons* or *implications* for the new International Centre for Human Rights and Democratic Development? Here is my brief list:

One, the centre must add something special to the international arsenal and to the Canadian arsenal. It has a special role. It must not duplicate others. It is sanctioned by the Parliament of Canada, but it is independent and should so behave.

Two, it should not replicate the full caution of government, nor burn its bridges by playing the full adversarial role that others may adopt.

Three, it will have links with governments and should use them, but use them judiciously.

Four, it can help find ways through the real, difficult choices which still remain in defining and pursuing human rights policies internationally. This implies that it must produce research and analysis of top quality.

Five, it could well produce or encourage full-scale reporting on human rights situations. It could also provide the kind of grid, and a forum for the dialogue, that the Winegard Report suggested.

Six, it can evaluate the impact of Canadian actions. Our government has decided, after a very intensive debate, to keep its final decisions on these issues private. But it is certainly open to outside bodies of prestige and expertise to bring them to light, to evaluate the outcomes of policy, and to consider the question of alternative decision-making procedures if those being pursued are not satisfactory.

Seven, it can get directly involved in positive support to unions, to universities, to NGOs, to the media, and to governments where possible without cooptation.

Eight, it can even build expertise and credibility to mobilize its own investigatory and mediatory intervention where the situation permits.

To conclude, I note that the serious commitment to human rights and development in our foreign policy takes us back to the best of the visionary philosophy at the end of the Second World War. The aim was, and still is, to build a new and better world. The challenge is still to look for ways of achieving global goals with limited means. It takes us back to the principles of functionalism and multilateralism. It takes us to arenas where we, in this country, can exert a major global influence that is commensurate with our interests and our responsibilities. I believe that development is one of those fields, and that human rights is another.

Notes

1. "Fighting Different Wars: Canadians Speak Out on Foreign Policy," in *Review '87 / Outlook '88* (Ottawa: The North-South Institute, January 1988), pp. 11-12.

2. Ibid., p. 12.

3. Bernard Wood, "International Aid," presented at Canadian Human Rights Foundation conference, "Human Rights and Canadian Foreign Policy," Ottawa, March 29, 1987.

4. See Gerald Schmitz and Victoria Berry, "Human Rights: Canadian Policy Toward Developing Countries," *Briefing 21* (Ottawa: The North-South Institute, December 1988), for a useful discussion of these issues.

5. *Rural Poverty in Bangladesh: A Report to the Like-Minded Group* (Ottawa: North-South Institute, April 1985).

In Search of Accountability in Canada's Human Rights Policy: An NGO Perspective

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Tim Ryan

Résumé

L'auteur esquisse l'historique de l'implication des églises canadiennes dans le développement international et en faveur des droits de la personne. Il souligne le rôle important joué par les ONG à titre de : (1) fournisseurs de faits, permettant de documenter les cas de violations aux droits de la personne; et (2) défenseurs d'orientations, faisant pression auprès du gouvernement canadien et des organismes des Nations Unies. Les églises canadiennes et les organismes non-gouvernementaux ont joué un rôle essentiel afin d'inciter le Canada à occuper une place plus active en Amérique centrale. Les églises ont aussi fait pression afin d'obtenir la création d'un organisme consultatif sur les droits de la personne ainsi que la révision annuelle et publique de l'état des droits de la personne dans les pays récipiendaires de l'aide canadienne.

L'auteur considère ensuite les questions politiques de fond et fournit un examen détaillé du sort réservé à plusieurs propositions relatives aux droits de la personne lors de la récente révision, par le gouvernement fédéral, des relations internationales du Canada. Il note que plusieurs de ces propositions n'ont pas réussi à influencer les politiques gouvernementales et plaide à nouveau en faveur de la création d'un comité consultatif sur les droits de la personne. Il voit le rôle des ONG comme remettant continuellement en question "la tendance des décideurs politiques de se contenter d'attentes ou

d'assurances naïves, du point de vue analytique" concernant l'état des droits de la personne dans les pays du Tiers-Monde.

This paper is based on the experience of the Inter-Church Committee on Human Rights in Latin America (ICCHRLA), for which I work. I believe that our experience reflects, in a general way, that of other Canadian church bodies and the broader Canadian NGO community concerned with the human rights and development aspects of Canadian foreign policy.

Let me proceed in terms of three main headings: (1) an overview of our activities in the human rights and foreign policy field, (2) a brief outline of our assessment of government initiatives taken over the last few years, with a view to analyzing and improving the effective integration of human rights issues into Canadian foreign policy, and (3) setting out what appear to us to be some current opportunities and challenges for such integration.

I. Past Experience of ICCHRLA in the Human Rights and Foreign Policy Field

For more than a decade now, ICCHRLA has functioned as a focused, action-oriented ecumenical organ of a broad grouping of major Canadian churches. As one member of a family of similar church initiatives with different geographical and thematic mandates, ICCHRLA has tried, on behalf of Canadian Christians, to contribute in practical and concrete ways to the struggles of peoples in Latin America to overcome human rights violations and to advance towards greater social justice and full human development.

While this specialized work on the international human rights agenda of Canadian foreign policy represents a relatively recent Canadian church initiative, it and other undertakings like it evolved quite naturally and necessarily out of traditional church commitments. Concern for sisters and brothers in all parts of the world has been reflected throughout Christian history—though not always in ways of which we are proud—in mission efforts which included humanitarian and assistential undertakings. Already in the early 1960s, when I went to Brazil as a young missionary, the humanitarian element of our task had been rearticulated in developmentalist, as opposed to assistentialist, categories.

As part of a continued evolution of consciousness and analysis in critical social science theory and in the political and economic revindications of the world's poorer nations and their churches (i.e., proposals for a New International Economic Order), a commitment to developmentalist theory and solutions gave way, in Canada's churches, to a recognition of the need to understand and attack the problems of poverty and injustice at the level of their structural roots and causes. Canadian churches saw themselves summoned to demonstrate their caring for sisters and brothers in Latin America by joining practically and effectively in their struggles for basic human rights—not only by supporting their struggle there, but by doing what only we could do here in Canada and on the international stage.

The effects of Canadian churches through initiatives like ICCHRLA have incorporated three main areas of concentrated, collective practical effort.

The first of these is *an independent and objective pursuit of the facts on human rights situations*—one which would be as free as possible of ignorance and manipulation, and of political, strategic, or ideological bias. Given communal links with Christian churches in Latin America and historic missionary, assistential, and development relationships, a considerable network of sources of information, analysis, revindications, and strategies already existed. These were complemented by efforts to establish links with human rights organs, and by the broadest possible range of contacts with other representative groupings and sources. In both their traditional and more recently established relationships in other parts of the world, Canadian churches have clearly been oriented by contemporary Christian emphases like: (1) concentrating especially on the experience and testimony of poor majorities and other groupings impacted by injustice, (2) embracing a broad view of human rights incorporating both individual, civil, and political, and economic, social, and cultural rights—one which in positive terms reflected contemporary Christianity's general commitment to just, participatory, and sustainable societies, and (3) employing a critical social analysis (born out of awareness of the unacceptability of the *status quo*) which allowed an exploration of interrelationships and causes, as opposed to simply attacking symptomatic results.

A second-step—after obtaining the most objective and balanced human rights assessments possible according to the above objectives and emphases—has been *to determine how Canadian Christian churches can join in the struggles to overcome such patterns of human rights abuse*. This has involved groups like ICCHRLA in the search for *linkages between Canadians and the situations in question*. It has involved a practical quest for positions which could be suggested to the Canadian government and other Canadian and international institutions as a means of impacting these problems.

A third level of work has been *the pursuit of practical strategies aimed at giving such church policy positions some concrete effect.*

- ICCHRLA, other church bodies and a broad spectrum of NGOs concerned with international human rights issues have concentrated on United Nations human rights structures as one area of potential contribution. For a number of years, these Canadian NGOs have tried to inform, prod, and monitor Canadian government participation within various UN human rights organs. They have also tried to influence other governments and UN human rights organs directly.
- There have been many efforts by the churches to persuade the Canadian government to undertake certain bilateral diplomatic actions.
- There has been an extensive and often contentious dialogue between the churches and the Canadian government on the relationship between Canadian official development assistance programs, the government's commitment to the promotion of human rights, and human rights assessments of ODA recipient countries.
- Canadian churches have long pressed for the reform of international economic relationships and structures—focusing on issues like Third World debt, the terms of trade, etc. They have argued strongly that such factors are intimately linked to human rights issues.
- There has been a great deal of Canadian church and NGO energy invested, in recent years, in trying to promote a more active role by Canada in the search for peace in Central America. A resolution of regional and civil strife and of third-party intervention in the area was seen as directly linked to the human rights struggle.
- Canadian churches have long pressed the Canadian government on the relationship between the human rights struggle and Canada's participation in international financial institutions (IFIs).
- There has been, for more than a decade, church dialogue with a broad range of Canadian private sector institutions on the implications of human rights considerations for the social obligations of Canadian corporations.

II. Initiatives Taken by the Canadian Government in Recent Years to Examine and Improve the Integration of Human Rights Concerns into Canadian Foreign Policy

1. The "Special Joint Committee"

A Special Joint Committee of the Senate and the House of Commons was created on June 12, 1985 to examine Canada's international relations.

Canada's churches participated very broadly in the public hearings held by this committee. Many written and oral presentations were made, both by national church bodies like ICCHRLA and by scores of local, community-based church groups in all regions of the country.

ICCHRLA stressed the importance of Canadian foreign policy taking into consideration the context and causes of human rights violations. It called for the full integration of human rights concerns into Canadian foreign policy. On the basis of many years of work with the Canadian government in this area, it pointed to the necessity of the government adopting a clearly outlined set of human criteria and an effective mechanism for concretely applying them. It argued that such a mechanism should incorporate a system of broad consultation with NGOs on human rights assessment. As practical measures to improve the government's assessment of human rights situations and its application to policy, ICCHRLA argued for the creation of a human rights advisory body, and for the institution of annual, public, parliamentary human rights hearings.

The Special Joint Committee report of June 1986, ***Independence and Internationalism*** (the Hockin-Simard Report), embraced a number of the recommendations which had been made by ICCHRLA and other church and NGO presentations to the committee. The committee's report emphasized the critical importance of dealing with international economic issues like the debt crisis. It proposed an international conference to seek a resolution of that crisis. It reaffirmed that Canada's development assistance programs should be aimed at helping the poorest. It advocated fully integrating human rights concerns into Canadian foreign policy.

On the subject of mechanisms needed to make the application of human rights concerns to Canadian foreign policy effective, the committee supported better government consultation and cooperation with NGOs and called on the government to investigate the creation of a "Human Rights Advisory Commission." It expressed the hope that the newly-created parliamentary Human Rights Committee might prove to be the appropriate channel for reviewing human rights integration into Canadian foreign policy in general and Canadian official development assistance in particular. It pointed out that the findings and recommendations of parliamentary committees in the human rights area could be a key element in cabinet consideration if the committees were to request a comprehensive response under Parliamentary Standing Order No. 99.

The Hockin-Simard Report also suggested the adoption of a classification grid like that put forward in 1982 by the Sub-Committee on Latin America and the Caribbean for applying human rights criteria to decisions on ODA. Countries classified as gross and systematic violators would have Canadian bilateral aid suspended. Those with serious but lesser violations would receive aid only through NGO channels.

The government's response to the Hockin-Simard Report, *Canada's International Relations*, was strongly supportive, in principle, of the promotion of human rights as a fundamental and integral part of Canadian foreign policy. It accepted the committee's standard that an unacceptable human rights performance was one in which there was a pattern of gross, systematic, and continuous violations of basic human rights.

But on how such a principle and standard were to be practically applied, the response was disappointing. The government undertook to improve consultations with human rights NGOs and promised to consider the creation of a human rights advisory body when there was greater clarity on the role that would be played by the two parliamentary committees with responsibilities in this area. It rejected the call for an annual parliamentary human rights review, undertaking only to consider reports produced by parliamentary committees. The response argued that human rights considerations should not be given undue weight, and that the ability to deliver aid to those in need should also be taken into account. It welcomed further parliamentary committee input on the question of incorporating human rights criteria into Canada's role in international financial institutions. Finally, it committed the government to pressing human rights concerns with other governments through a "judicious blend of public pressure and private persuasion."

2. The Winegard Committee's Examination of Canada's Official Development Assistance Program

The House of Commons Standing Committee on External Affairs and International Trade began this process in June 1985 (under the chairmanship of William Winegard). During its hearings and deliberations, both national and local church bodies once again energetically contributed views and suggestions on a range of development and human rights issues. The committee's report, *For Whose Benefit?*, was released in May 1987.

The Winegard Report stands out for its strong endorsement of linkage between human rights and ODA. It argues that human rights are not a matter extraneously related to ODA, but rather constitute one of the most important conditions for true development. It points out that human rights are integral to the development of human resources—an objective which is at the centre of all true development efforts. The report also holds that Canadians have a right to expect support for human rights from governments which are the recipients of Canadian ODA.

While recognizing the risk and difficulties inherent in conditioning ODA on human rights assessment, the committee argues that the linkage nevertheless must be made. It lays out a series of criteria by which this can be done: clear principles; reliability of information; a consistent and considered approach; coordination with the actions of other donors; and avoiding ideological, strategic, and political bias.

The Winegard Report sets out a number of principles for the application of human rights policy. It should be:

- coherent with general foreign policy
- "applied universally in a consistent and transparent way"
- employing established international law and convention
- embracing both civil-political and economic-social rights
- based on verifiable reports rather than on bias
- seeing development as linked to promoting human rights.

Along with its balanced outline of principles, the report places strong emphasis on the need for a realistic operational framework for concretely and effectively applying such principles to ODA policy.

Noting that Canada's past performance in this context has been criticized as "episodic and reactive," the report calls for new human rights review procedures within CIDA, and for an annual human rights review process before the two appropriate parliamentary committees. It recommends the creation of a classification grid which would rank countries as "human rights negative," "human rights watch," "human rights satisfactory," and "human rights positive." Such a ranking would engender a set of policy implications, not only in terms of bilateral ODA allocations but also Canadian participation in IFIs and the monitoring of Canadian arms sales.

An operational system is suggested for CIDA which would allow the systematic integration of human rights criteria and assessment into ODA planning and decision making. Such a system should involve appropriate consultation with NGOs having expertise in the area.

The Canadian government's response to the Winegard Report, *Canadian International Development Assistance: To Benefit a Better*

World, was published in September 1987. While it agrees that a relationship should exist between human rights performance and the granting of Canadian ODA, the government's position is deeply disappointing both in the principles it sets out to do so and in its rejection of the operational proposals of the standing committee's report.

Ottawa rejects the classification grid, arguing that human rights criteria are too difficult to apply, and implying that the intrusion of ideological and strategic considerations cannot be avoided. Even the human rights standard traditionally applied by the Canadian government to ODA decisions is surrounded by additional qualifications. "Gross, systematic and continuous violation" situations are categorized as "extreme," "flagrant," and often "short-lived." Even where such serious patterns of violation exist, the response argues that aid should be delivered wherever a continued political dialogue and aid delivery are possible, so that the situation can be improved.

The government also rejects the tabling of any annual human rights review arguing that such processes injure Canadian foreign policy interests and occasion criticism and contention. All that is conceded is that parliamentary committees have a role in considering human rights application, and that the applicable cabinet ministers be prepared to respond to human rights concerns in ODA-recipient countries when they appear before such committees.

There is a rejection, too, of suggested program-review human rights assessment by CIDA. The only undertaking is to provide human rights information to cabinet when it annually considers ODA allocations.

3. *"Sharing Our Future": CIDA's New Strategy*

A final step in the Canadian government's recent examinations of how to relate human rights concerns to ODA policy was the release of a new "strategy" by CIDA.

The document *Sharing Our Future* pledges that ODA priorities will be dictated by consideration of poverty and need, recipient links with Canada, and human rights. Exclusions from eligibility for aid will depend on economic, political, and human rights factors.

Cabinet is charged with making annual, confidential, five-year allocation-planning decisions based on:

- need
- a recipient country's capacity and commitment to manage aid
- the quality of a country's economic and social policies
- political and economic relationships with Canada
- human rights performance

- a commitment to involving people in the development process.

Cabinet will exclude from bilateral ODA eligibility a country which has a pattern of gross, systematic, and continuous violations, and where there is an inability to ensure that aid will reach those for whom it is intended.

Where there is progress on human rights, ODA would be increased. NGOs effectively promoting human rights improvement would be supported. A special unit will be created within CIDA to ensure that ODA programs are consistent with Canadian foreign policy commitments on human rights, and to provide human rights training for agency personnel. The two ministers responsible for ODA undertake to provide human rights information on ODA recipients in the course of appearances before the two appropriate parliamentary committees. It is suggested, however, that the committees may wish to hold such sessions *in camera*.

4. An Overall Assessment of the Three Government Initiatives

- It is clear that the two parliamentary committees which examined human rights and foreign policy issues have gone much further in their suggestions on human rights application than the present government has been willing to accept.
- The three initiatives have resulted in a very clear commitment by the government to integrate human rights fully into Canadian foreign policy.
- In practical terms, government caution will continue to make this commitment almost wholly ineffectual.
- The Canadian government's capacity to integrate human rights into its foreign policy remains, therefore, highly unsatisfactory. We must continue to demand a more honest and effective set of application rules, while attempting to work as best we can in the few additional areas that have been opened up by the three policy reviews treated above.

III. Some Practical Avenues Currently Available to NGOs in Pursuit of an Effective Integration of Human Rights Concerns into Canadian Foreign Policy

1. ICCHRLA and other Canadian church and NGO human rights bodies continue to have a very important role to play in listening to, and making known, how poor majorities and other affected

groupings experience the human rights situations in which they live. The tendency of all governments, including our own, is to be heavily influenced by governments and dominant forces within the societies in question. The ability of offender governments and their external supporters to engage, with increasing effectiveness, in what one Central American human rights body recently termed "human rights propaganda" only exacerbates the challenge of establishing the objective facts on human rights violations through continuing dialogue with the Canadian government.

Efforts by ICCHRLA and other NGOs, over the years, to encourage the Canadian government to broaden its own direct contacts within countries to include a broad range of grass-roots, credible, and independent sources of human rights information have borne some identifiable fruit in recent years. External Affairs Minister Joe Clark appears to have made greater efforts to structure meetings with such sources of information into his recent visit to Central America than has been the case with ministerial visits in the past.

While an objective assessment of human rights situations is always difficult, the best means of achieving it will always be the most direct possible contact with those suffering the effects of violations. Canadian NGOs concerned with human rights in other parts of the world must continue to try, in the Canadian foreign policy arena, to help provide "a voice to those who have no voice."

2. ICCHRLA and other Canadian church human rights bodies must continue to push Canadian foreign policy discussion in the direction of a critical examination of the roots and causes of human rights abuse. In so doing, they must try to challenge the tendency of government policy makers to seize on what, analytically speaking, are naive expectations or assurances.

Organizations like ICCHRLA have expressed understandable discomfort in the last year or so with an emphasis which seems to have emerged in Canadian foreign policy initiatives on human rights: one which consistently stresses the need to provide technical and resource assistance to human-rights-violator countries in order to help them overcome their "incapacity" to assure basic human rights. It is undoubtedly true, in some situations, that governments with a sincere commitment to improving human rights lack the means to proceed effectively. Canadian support is certainly appropriate in such cases, although assistance in areas like human rights monitoring ordinarily should be directed to independent rather than government-linked institutions. In most of the real-life situations of gross and systematic human rights abuse monitored by institutions like ICCHRLA, however, it is simply not true that patterns of abuse result from the incapacity of the governments in question. On the contrary, such situations are often characterized by a very sophisticated capacity of governments, their security forces, and other dominant social groups to maintain their hold on power through systematic terror tactics which involve gross and continuous human rights violations.

Canadian human rights NGOs clearly must continue to play a role in pressing Canadian foreign policy discussion on human rights to examine violations with some real critical objectivity. Where it can be established that governments seem clearly dependent on and dedicated to human rights violation, honest public policy discussions about how to favour more fundamental changes in the situation in question must be urged on the Canadian government and other parties. In such cases, it is clearly unacceptable to allow policies and decisions to be adopted which are predicated on the good-will and incapacity of the governments in question.

3. ICCHRLA and other church human rights bodies, in light of their commitment to and belief in the interrelatedness of the whole range of internationally recognized human rights, must press Canadian foreign policy discussion to examine and attack the international economic roots of human rights abuse. In ICCHRLA experience of monitoring the human rights situation in Latin America, the international debt crisis and other such unjust international economic burdens are clearly a grave contributing factor in human rights problems.

4. ICCHRLA and other church bodies dedicated to human rights monitoring and promotion must seek greater clarity on the human rights criteria which the Canadian government has committed itself to apply to our foreign policy. For example, while the Winegard Report embraces a concept of human rights which encompasses socio-economic and cultural as well as civil and political rights, Canadian government human rights assessments, such as those prepared over the last few years for the January consultation between the Department of External Affairs and Canadian human rights NGOs, appear to focus only on violations of civil and political rights.

   Apart from the breadth of the human rights criteria being applied, there is also a problem of levels of expectation. For example, in the cases of the restoration of bilateral aid to both El Salvador and Guatemala in recent years, the Canadian government has applied a standard of "improvement" in a human rights situation to changes in bilateral ODA policy. The government did not dispute the fact that abuses still were taking place in both countries at unacceptable levels. (Various monitoring sources continued to estimate that violations of the right to life were continuing in Guatemala at the rate of 50-100 per month). Yet the government asserted that there had been enough improvement to merit a significant change in Canada's foreign policy stance towards Guatemala. For both Guatemala and El Salvador, "improvements" were being measured against the records of countries where there had been thousands of violations of the right to life in a single year.

The need to clarify the criteria being applied to Canadian foreign policy in the human rights area is therefore evident. The NGO human rights community has an obligation to press for much greater clarity, acceptability, and consistency in standards and in their application.

5. Over the years, ICCHRLA and other development NGOs have explored a number of initiatives that could be taken by the Canadian government to promote and protect human rights. There appears to be a rather limited set of approaches available. All have their limitations. The challenge remains for all of us as Canadians to find channels of positive impact.

   The delicacy of employing human rights conditionality in bilateral ODA should not serve as an excuse for practically eliminating its use, in the absence of more effective alternatives. All of us, including government officials, should be engaged in a common search to expand our range of instruments aimed at the improvement of human rights situations in countries of grave concern.

6. The common search for more objective human rights assessment, greater consensus on standards, and more effective methods of countering negative human rights situations could be enhanced by the creation of a human rights advisory body. Such agencies exist in a number of countries and serve to bring concerned NGOs and government officials together on a regular basis. The Canadian government promised to explore the creation of such a body in its 1986 response to the Hockin-Simard Report. The time has come for it to move forward on this commitment, and for the NGO human rights community to see that it does so.

7. In general terms, while some sound advances have been made over the last few years in more clearly articulating the link between human rights concerns and Canadian foreign policy, there has been little progress in applying this linkage.

Canadian human rights NGOs should try to press ahead immediately in areas where the government has agreed to some small improvements in human rights policy:

- *CIDA's new human rights unit* will be charged with ensuring that ODA programs are consistent with Canadian foreign policy commitments in the field of human rights. Canadian NGOs should be actively involved in discussions as to how this unit will be organized and operate. They should begin to seek out ways in which they can appropriately communicate with this new partner in the dialogue with government on human rights issues.
- The government has undertaken to report on human rights issues in ODA-recipient countries to two parliamentary committees: the Standing Committee on External Affairs and International Trade , and the Standing Committee on Human Rights. The initiative now lies with these two committees to structure an adequate forum for receiving such human rights reporting from government ministers, but also for informing themselves responsibly by tapping other sources of information on the human rights situations in question. This would logically involve hearings where NGOs and others with informed views could express themselves.

  Canadian NGOs should press energetically for the creation of a meaningful parliamentary-hearings process on human rights and Canadian foreign policy issues. It seems unacceptable in a democratic society to have the examination of such issues take place only through rare reporting by ministers to parliamentary committees, and this possibly in secret sessions.
- As already noted, the Hockin-Simard Report suggested that the findings and recommendations of parliamentary committees in the human rights areas could be a key element in cabinet consideration of ODA if the committees were to request a comprehensive response under Parliamentary Standing Order No. 99.

  The government, in *Sharing Our Future*, has charged cabinet with the application of human rights criteria to ODA decisions. There must be some effective way of relating the overall consultative process on human rights to such central policy decisions. The method suggested by the Special Joint Committee should be carefully considered by the appropriate parliamentary committees and by Canadian human rights NGOs. There clearly should be some framework in which cabinet's actions are open to a reporting and accountability process.

- The government has committed itself "to ensure that human rights issues are given due consideration" in the activities of *international financial institutions*.

  Since this policy was announced, Canadian government actions have been inconsistent, and policy elaborations by government departments seemingly contradictory. There is need for solid work by Canadian human rights NGOs to make sure that the government's important commitment in this field is maintained, and effectively and systematically applied.
- The government has undertaken to pursue *diplomatic means* in fostering of human rights as an integral part of Canadian foreign policy. To repeat, it has promised to do so through a "judicious blend of public pressure and private persuasion."

  The experience of NGOs like ICCHRLA has been that the exercise of "public pressure" by Canada in this area is regularly rejected by the government as ineffective. It is extremely difficult to monitor a government's diplomatic efforts at "private persuasion."

  There is obviously a need for some frank and creative discussion between the Canadian government and the NGO community on improving the effectiveness of Canada's human rights diplomacy.

Do Interest Groups Make a Difference? Domestic Influences on Canadian Development Aid Policies*

David Gillies

Résumé

Cet article évalue l'impact qu'ont les différents groupes de pression intérieurs sur la politique canadienne d'aide au développement dans le cadre des modèles pluraliste, marxiste et étatique de politique étrangère. On y illustre la dynamique du processus d'élaboration des politiques d'aide par l'examen de trois exemples qui retracent le cheminement d'une question, de son état de demande sociétale à sa médiation par le Parlement et à son émergence en tant que politique gouvernementale. Ces micro-études soulignent les pressions de toutes parts que subissent les décideurs politiques, en tentant de concilier les intérêts possiblement contradictoires des lobbies commerciaux, des organismes non gouvernementaux et des groupes intéressés aux droits de la personne.

L'auteur tire quatre grandes conclusions : (1) l'approche étatique demeure le verre grossissant le plus utile pour comprendre la dynamique de l'élaboration des politiques d'aide et cela, même si son cadre d'analyse gagnerait à être raffiné; (2) la prééminence accordée à la promotion des exportations assure aux lobbies commerciaux de continuer à exercer une influence importante sur les politiques d'aide,

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[*] The author wishes to acknowledge the helpful advice of professors Cranford Pratt and Irving Brecher on an earlier draft of this paper.

bien que cette influence ne soit pas absolue; (3) l'ajout des droits de la personne au mandat de l'aide au développement représente une percée significative par le groupe dit du "contre-consensus" face à la résistance des bureaucrates; (4) une défense bien étayée par les ONG et les groupes de défense des droits de la personne, peut avoir un impact modéré sur la politique d'aide.

> *Foreign policy must not be the exclusive preserve of the few inside or outside government . . . I have stressed, and cannot stress enough, the importance I attach to parliamentary and public input in our foreign policy review process* [Flora MacDonald, *Statements and Speeches* 79/22, October 30, 1979].

Introduction

At the outset of a major review of Canada's foreign policy, the Hockin-Simard Report argued that "in an age of participatory democracy, a government must know what the people are thinking. On some issues it is our impression that the public has become a major source of information and even policy guidance" (Canada 1986a, 8). The Special Joint Committee which produced *Independence and Internationalism* travelled twice across the country and discovered that "over three quarters of the written submission and letters . . . received from the public dealt with three broad concerns: human rights in South Africa and Central America, peace and arms control and development assistance" (1986a, 7). That report emphasized that "the Government must take careful note of such intense and pervasive public interest because its effect is to place these concerns on the national agenda" (1986a, 7).

Do interest groups make a difference? And how? Do they simply inform or can they actually guide? How attentive is the government and on which issues is it willing to respond to societal demands? This paper addresses these questions by examining the demands of Canadian pressure groups in the field of human rights and development assistance. It does so by a detailed analysis of a sample of submissions to parliamentary committees reviewing Canada's international relations and development assistance program. The paper then moves on to consider the responses of the government to the recommendations of these committees.[1]

Three issues are singled out for analysis: (1) Canada's recipient-eligibility framework—using Mozambique as an example, (2) linking human rights criteria to Canada's voting behaviour in the international financial institutions, and (3) the role of commercial lobby groups in expanding export-financing objectives through the development aid program. The paper is embedded in a theoretical framework that assesses the relative influence of interest groups, parliament and the state in the context of liberal, marxist, and statist approaches to policy formulation.

Conceptual Framework

In Canada, as in other democratic systems, the growth of state intervention in the economy has been accompanied by an extensive bureaucratic apparatus and by a shift in the balance of political power away from the legislature toward the executive and the bureaucracy (Campbell 1978; Brodie and Macnaughton 1980, 104). It is sometimes claimed that as bureaucrats have commanded more autonomous powers in policy making, civil interest groups have increasingly directed their demands to the administrative wing of government (Meisel 1979, 123). In this process, both parliament and political parties have been effectively marginalized in the policy process and a new system of functional representation has emerged to fill the policy vacuum (Pross 1982). The net result is that politics, effectively, goes underground as administrative agencies build up client networks with their functional constituencies and bypass traditional democratic mechanisms of "open" policy debate. Whether this "interest group liberalism" is seen as an efficient virtue (Pross 1982, 107-108), or as undermining democratic processes (Meisel 1979, 123; Lowi 1969, 71, 85-93) depends, ultimately, on perspective.

There are, however, signs that the policy framework in Canada, in both domestic politics and external relations, is undergoing a subtle shift in the balance of interests. In part, this has been due to efforts to upgrade the role of parliament as a policy actor, particularly through reforms that enhance the scrutiny role and research capacity of parliamentary committees (Dobell 1980; Franks 1986; Schmitz 1987; Jackson 1987, 10-11).

A principal purpose of the paper is to assess the impact of interest groups on foreign policy by tracing the passage of an issue from its initial societal demand, through its mediation by parliament, to its emergence as government policy. The cases described below indicate that interest groups do play a vital role by: (1) providing or supplementing the state's information, and (2) by drawing issues into the political domain and convincing government of their urgency and importance (Stairs 1977-1978). While the direct impact of interest group demands on policy output is difficult to establish with certainty, the paper underlines not only the extent to which government policy is responsive to commercial interests, but also the potential of intelligent advocacy by development NGOs and human rights groups to modify official perspectives and policies.

Theories of State and Society

Of three broad frameworks used to assess the domestic sources of foreign policy, statist approaches locate policy-making power firmly within the state, while pluralist and dominant-class approaches are fundamentally society-centred explanations of political behaviour (Nordlinger 1981, 1-41; Pratt 1983-1984).

For pluralists, groups and their diverse interests are the elementary particles of the political system. Groups are therefore the starting point for any analysis of policy formulation. Pluralists assume that "private actors control a great armoury of political resources . . . that are readily translatable into political coin with which to importune, threaten, pressure and levy sanctions against the state" (Nordlinger 1981, 42). Though by no means relegated to the status of an "epiphenomenon," the state in this model is "servant, not master," faithfully implementing legislation and policies that have emerged through structured competition among diverse interests.[2] For pluralists, power and influence are situational, varying with the issue, rather than systemic, as marxists would hold, or bureaucratic, as statists believe.[3]

Statist approaches, whether of liberal or neo-marxist hue, assume that the bureaucracy has a substantial autonomy to determine public policy. Expertise, control of technical and financial information, and the atrophy of effective legislative scrutiny of complex policy issues provide the foundations for bureaucratic power. In this analysis, the state is responsible for maintaining and reproducing the structures of accumulation and legitimation (Poulantzas 1978; O'Connor 1973). Conceptions of the "national interest" among senior state officials may diverge from those of key civil interests. To the extent that policy conforms to the interests of public officials, the state can be viewed as an autonomous actor (Nordlinger 1981, 8).

Pratt (1983-1984) has identified the central weakness of statist approaches as their dismissal of the domestic determinants of foreign policy. Preferring a "non-doctrinaire" dominant-class approach, Pratt emphasizes the impact of those "louder voices" in society—the corporate sector—in moulding *status quo* Canadian policies towards the Third World.[4] On this view, Canada's development aid program would be conditioned by the deep-rooted links between the commercial lobby groups and key state departments such as External Affairs, Finance, the Export Development Corporation, and CIDA. A parallel interest in maintaining the structures of capitalism would require the Canadian state to be responsive to the interests of the corporate sector. By contrast, groups advocating more socially just policies towards the Third World constitute a vocal but largely impotent "counter-consensus" to the prevailing corporate ideology in Ottawa.

The case studies below will help to assess the validity of these competing theoretical claims. To preview my argument, I find that while the statist "reading" of development aid policy remains broadly persuasive, bureaucratic policy makers are not able to implement their preferred policies in all circumstances. In particular, development NGOs and human rights groups have some potential to alter official perceptions through credible and informed advocacy. The boundaries of "policy transparency" in the aid-human rights field are, however, narrowly circumscribed.

Three Case Studies

The Aid Recipient-Eligibility Framework: Canada and Mozambique

Canada disburses its development aid to approximately 130 countries and regional economic groupings. Decisions on who should or should not be given aid, at what level and by what means are fundamentally political and taken, ultimately, by cabinet. While the new eligibility framework outlined in *Sharing Our Future* (Canada 1988, 28) includes developmental criteria such as economic need and the human rights record, Canada's commercial interests and broader links in the Commonwealth and La Francophonie are also important in determining "core" recipients of Canadian development aid. Decisions on bilateral aid levels will continue to be made in cabinet where ministers will establish confidential five-year planning figures (Canada 1988, 30).

Under the new selection system, all developing countries will be eligible for all forms of Canadian development aid. This framework replaces the old "Categories of Eligibility List." But it is this older list that we must initially consider, since in ranking recipients according to the nature and intensity of Canada's interests in the country and according to the mechanism of aid delivery, the list had the effect of relegating some of the poorest LDCs to marginal status as Canadian aid recipients. This was precisely the fate of Mozambique, which, until very recently, languished in Category III, eligible only for minimal aid on an *ad hoc* rather than a planned basis (Rudner 1985, 130-131).[5]

Three cases—Nicaragua, El Salvador, and Guatemala—underline real differences in perception between the government and the NGO community regarding country selection criteria and aid levels.[6] The development NGOs have not achieved their goal of altering official Canadian policies in any of these cases. A fourth case, Mozambique, illustrates that, over time, NGO and government perspectives can partially coincide.

Mozambique gained independence in 1975, after a long and bloody liberation struggle. Since then, the Canadian government has maintained an uneasy and tentative relationship with the Frelimo leadership. It was not until January 1988, some 13 years after the severing of the colonial tie, that Monique Landry, Canada's minister for external relations, used the Arusha SADCC Conference (a regional economic group of the front-line states), to announce an official bilateral aid program for Mozambique.

The immediate background to Canada's growing aid profile in Mozambique is the rapid deterioration of the economy, the destruction of its already sparse infrastructure, deepening famine in the context of civil war, and an intensification of South African efforts to destabilize the front-line states.[7] The cumulative effect of nearly 25 years of continuous war is that Mozambique is now ranked by the World Bank as the sixth-poorest country in the world.

Canada's relative neglect of Mozambique has been an anomaly in an otherwise-strong commitment to aid the poorest of the developing countries—a commitment to which Canada has responded by implementing the UN recommendation that donors provide at least 0.15% of their GNP for the least-developed countries, and by treating this group as "core countries" in the recipient-eligibility framework. But as we have seen, until 1988 Mozambique remained largely ignored as an aid recipient.

The reasons for this neglect are twofold. First, Canada has not had strong historical, economic, or cultural links with Portuguese Africa; and in the context of regional development aid, there has been a natural tendency to emphasize aid to Commonwealth and Francophone countries. Secondly, there has been some Canadian antipathy towards the marxist regime, and concern regarding the overt military and economic linkage with the Soviet Union which is perceived to be destabilizing in the Southern African region.

In contrast to the government's caution, NGOs such as Oxfam-Canada have had a relatively extensive involvement in Mozambique and a sympathetic attitude to the difficulties facing the Frelimo government. Some Canadian NGOs were, indeed, active in helping Frelimo bases in Tanzania during the liberation struggle itself. At that stage, the NGOs unsuccessfully lobbied the Canadian government to develop links with Frelimo, since it seemed clear that the liberation movement would eventually form a government in an independent Mozambique (Anglin and Shaw 1978).

This time, as conditions in Mozambique rapidly deteriorate, the concerted and organized efforts of the NGOs have had a greater impact in sensitizing the Canadian government to the plight of the country. Their efforts have been aided, no doubt, by the government's inability to ignore the stark realities of economic devastation and famine conditions or the growing international concern about South Africa since Samora Machel's death in 1986.[8] Nor, finally, should we discount the role of Joe Clark, who as secretary of state for external affairs has taken a strong personal interest in human rights and who visited Mozambique in August 1987.

What have the development NGOs done to voice their concerns, and how has the government responded? In February 1987, the Canadian Council for International Cooperation (CCIC) convened a conference provocatively entitled "Taking Sides in Southern Africa." NGOs and delegates urged Canada to increase its aid to Southern Africa, particularly Mozambique (*South African Report*, April 1987, p. 28). In turn, the government used the occasion for a major statement on Canadian policy in the region. Mr. Clark announced Canada's intention to provide $400 million in aid to Southern Africa over the next five years. However, no specific mention was made of Mozambique.

In April 1987, after considering the conclusions of a parliamentary fact-finding mission, Monique Landry announced a $15 million food-aid program for Mozambique (*Government of Canada, News Release*, April 2, 1987). By March, Landry had approved an additional $1 million in emergency relief. But there was still no official decision on Mozambique as a core recipient of Canadian development aid.

In November 1987, under the general stewardship of CCIC, a group of 18 Canadian NGOs pooled their energies and formed a Mozambique Task Force. The group launched a three-year, $7 million grass-roots development effort focused in Nampula province, where Canada already had a presence helping to construct the Nacala railroad under the SADCC regional development program. The task force also undertook an extensive lobbying campaign which appears to have had an impact. Mozambique was allocated $30 million in Canadian aid for fiscal year 1987-1988. As we have seen, about half of this will be food aid, with most of the remainder going to support infrastructural projects, particularly in the vital sector of railroad construction. Still to be considered, however, is a complete "country-focus" plan that tackles the long-term infrastructural needs of this beleagured country.

A more controversial issue concerns the views of a number of NGOs that Canada provide some forms of military assistance to the front-line states in order to protect development projects in the region. Although this possibility was mentioned by Mr. Clark during his visit to Mozambique in August 1987, since his return he has firmly denied that Canada will consider non-lethal military assistance. Perhaps, as Freeman suggests, only a continuation of the persistent *Renamo* attacks on the Limpopo railway that Canada and Britain are helping to rehabilitate will oblige the Canadian government to confront this issue (1988, 27).[9]

In the meantime, EEC donor countries have signed an agreement with Mozambique to use Lomé III funds for "defence expenditure of a civil nature," i.e., food and shelter for military personnel guarding Mozambican development projects. Ironically, even the normally intransigent British are now training some Mozambican cadres (*Facts and Reports*, vol. 18, no. C, 1988).

Development aid and state survival in Southern Africa are likely to be more closely intertwined in the future because, as Dan O'Meara underlines: "Wherever possible, [South Africa] . . . now seems intent on replacing what it sees as hostile regimes [in the region] . . . Mozambique seems to be the main target of this effort. How it will work out will depend to a large extent on international involvement" (1987, 82-83).

There is no doubt that current Western interest in Mozambique is underscored by a strategic concern to stabilize and manage the regional conflict. And for its part, the Frelimo leadership has pragmatically down-played its marxist rhetoric by joining the IMF and World Bank. While some concern continues to be raised about human rights abuses in the country, Amnesty International has also acknowledged in its 1988 report (p. 58), that as many as 40 political prisoners were released in 1988—an impressive achievement for a government coping with civil war.

In the light of these circumstances, the case is strong for a rapid expansion of Canada's bilateral aid to Mozambique. It should be made a country of concentration among Canada's aid recipients.

Human Rights Conditionality and the International Financial Institutions: The Role of Advocacy

> *Canada is a world leader in encouraging the interest and participation of its citizens in the aid program* [*For Whose Benefit?*, p. 92].

The voluntary sector plays an important role in the delivery of Canadian aid, accounting for approximately 9 per cent of the total bilateral aid budget—the largest proportion among the major aid donors. Despite the potential leverage this gives the NGO community, a recent study found that only 15 per cent of voluntary agencies surveyed viewed policy advocacy as an integral part of their mandate

(Brodhead and Herbert-Copley 1988, 50). In what follows, the potential impact of informed advocacy is clearly evident.

In Canada, much of the discussion on human rights conditionality has centred on its use in bilateral, government-to-government assistance (Rudner 1983; Keenleyside, this volume). Yet the potential for linking human rights considerations to aid-giving is even greater in the case of multilateral ODA, which accounts for more than one-quarter of total aid disbursed by the Development Assistance Committee (DAC) of the OECD.[10] The prospects for leverage widen even more if we include the International Monetary Fund (IMF),[11] which in the 1980s has emerged as a critical player, not only in supervising economic adjustment and debt rescheduling in LDCs, but also in constructing new financial packages for Third World debtors (C. Pratt 1985; Lipson 1985). In fiscal year 1988-1989, $460 million, or 17 per cent of total Canadian aid, will go to the international financial institutions (Canada 1988, 67).

While the United States and some European donors have on occasion been willing to protest IFI loans to serious human rights-violating countries, Canada has generally avoided doing so (Schoultz 1981, 296-298). The government has taken the traditional position that the IFIs should be insulated from the intrusion of political objectives in their lending deliberations. In their articles of agreement, the IFIs espouse a doctrine of strict political and economic neutrality, in which loan and project decisions are to be based on technical criteria of developmental and macroeconomic soundness (Swedberg 1986, 377). But real conditions belie these formal assertions. In addition to a heavily-weighted voting system and the political appointment of top decision makers in the World Bank and the IMF, "conditionality"—or the agreement by recipients to undertake IFI-initiated alterations in macroeconomic policy—has become an institutionalized feature of some World Bank and most IMF structural-adjustment lending. Despite mounting evidence to the contrary, the IFIs cling tenaciously to the myth of political neutrality (Payer 1982; Swedberg 1986; Haggard 1985). As Renate Pratt has observed, "if it is a political act to withhold [loans], it is also a political act to grant them. At the very least, the effects of such an act have important political implications and consequences" (1985, 13).

For one Canadian advocacy group, the IFIs represent a potent weapon with which to undermine repressive human rights-violating regimes. Pinochet's Chile is an obvious target for this kind of linkage, and a litmus test of the Canadian government's willingness to actively assert human rights issues in the conduct of its foreign policy. The Taskforce on the Churches and Corporate Responsibility (TCCR) was established in 1975 as an ecumenical organization of the principal Christian churches in Canada. Its broad mandate is to promote the concerns of human rights and social justice in corporate activity. More recently, the taskforce has also lobbied the Canadian government to address human rights issues in its international economic activities.

In its briefs to parliamentary committees,[12] the taskforce has pressed hard for alterations in the government's position on IFI lending and, in particular, has urged that human rights considerations become a co-determinant of Canada's voting behaviour in the IMF. These efforts have yielded some partial but, with hindsight, perhaps temporary alterations in government behaviour.

An initial victory was the strong line taken in the Hockin-Simard Report, which "recommended that Canada use its voice and its vote at meetings of international financial institutions to protest systematic, gross and continuous violations of human rights" (Canada 1986a, 103). More was to follow. The taskforce kept up its pressure and targeted, in particular, Tom Hockin who had co-chaired the Special Joint Committee's report.[13] As a member of cabinet, Mr. Hockin may have played an important role in overcoming the resistance of the Department of Finance and he contributed to the government's decision, in November 1986, to abstain from voting on a $250 million World Bank structural-adjustment loan designed to support Chile's balance of payments. Canada was joined by a number of other members of the World Bank, and together with these countries comprised 45 per cent of the voting capital in a combined abstention on a vote to grant the second installment of the loan. Canada's executive director at the Inter-American Development Bank (IADB) also abstained in a vote for an electricity-sector loan to Chile.

In retrospect, these actions were the highpoint in the taskforce's efforts to alter government policy on this issue. Since then, the government has emphasized that the World Bank and IADB abstentions on Chile should not be viewed as a precedent. Thus, in an official reply to the taskforce, External Affairs Minister Clark termed the Chile abstentions "unique occasions" and "exceptional action[s]." He remained unconvinced "of the effectiveness of such measures on a regular basis. . . . . Accordingly, our regular practice will continue to be to consider loans on their developmental, economic and technical grounds."[14]

Despite the government's retreat from an earlier initiative, the taskforce has reason to be cheered by the Winegard Committee's report on the aid program. Although the word "vote" does not appear in its discussion of human rights and IFI lending, the committee did recommend "that Canada work for changes to allow human rights concerns to be put openly on the agendas of the international financial institutions and, in addition, examine very critically multilateral loans to countries deemed 'human rights negative' or 'human rights watch' " (Canada 1987a, 29).

In the government's response to the Winegard Report (Canada 1987b), the committee's recommendation on IFI lending is "accepted in principle." But a closer examination of the text suggests that the government's "due consideration" of this issue will fall well short of using its vote to block loans to rights-violating countries. The most we can expect in the future is that "in countries where the human rights situation is particularly troubling, Canada will use its influence to ensure that greater scrutiny is used in the development of country program strategies and the selection of projects to assist disadvantaged groups" (1987b, 56). While this is a welcome proposal and one long advocated by the taskforce, it falls short of the taskforce's broader objective. In effect, it signals that Canada will use its voice, but not its vote, in the IFIs. On this issue at least, the government's will has prevailed; conditions have largely returned to the *status quo ante*, and an important window of opportunity for strengthening Canada's human rights policy may have been closed.

Confirmation of these assessments can be found by returning to the World Bank loan to Chile. In the government's (but not the taskforce's) view, the human rights situation in Chile had improved during the course of 1987, which, in turn, provided good reason for Canada to vote in favour of the third installment of the structural-adjustment loan to Chile.

What, then, has the taskforce achieved? One might be tempted to say, "Precious little!" But I do not wish to be so gloomy here. At the very least, it has placed an important issue on the foreign policy agenda. Moreover, the Chile decision undoubtedly is a precedent, the government's subsequent retreat notwithstanding. Finally, although the prospects for a further change in policy are not bright, in its response to the Hockin-Simard Report, the government indicated that it "would welcome a detailed examination" of the human rights-IFI link by the parliamentary committee (1987b, 74). The broad mandate of the Winegard Committee's review of the aid program prevented a closer examination of the issue in *For Whose Benefit?* But the opportunity and encouragement to do a detailed study clearly remains. It is now up to the committee to take up the challenge.

Aid and Export Promotion: The Role of Commercial Lobbies[15]

1. Before the Winegard (SCEAIT) Report

Canadian development NGOs—by virtue of their numerical strength, their responsibility for approximately 9 per cent of the total ODA budget, their formal inclusion in CIDA's country programming cycles, and their tacit responsibility for the bulk of Canada's "basic needs" development work—have, in theory, an opportunity to play an influential policy role. As we have seen, their ability to alter policy is relatively modest. Commercial groups, by contrast, though fewer in number, have traditionally exercised a strong influence on the aid program.[16] At the broadest level, Canadian governments of both political stripes have frequently argued that the support and favour of the business sector is essential for the continued expansion of the aid program. More specifically, they have agreed with the long-held convictions of the business community that Canadian aid must yield domestic benefits.

This position has been vigorously defended on the issue of tied aid. As is well known, this device requires the recipient to spend a proportion of its aid on goods and services produced by the donor nation. It has been criticized for reducing the value of aid by requiring the recipient to purchase goods that may be more cheaply produced elsewhere (Bhagwati 1972; Hamilton 1978). It is used, in effect, as a subsidy for Canadian exporters and in this respect is not essentially different from the trade promotional activities of the Export Development Corporation (EDC).

After Austria, Canada has the worst record on tied aid among the Western donors (Hendra 1987). Until 1988, regulations on Canadian content required that approximately 80 per cent of the value of bilateral aid be spent in Canada. Food aid is even more emphatically tied to Canadian products (up to 95 per cent of total food aid)—a reflection of the combined power of Western Canadian agricultural lobbies and the Department of Agriculture; the latter retains considerable autonomy over the food aid program (Wyse 1983, 11-15).

Until very recently, Canadian governments have shown remarkable intransigence on the question of tied aid.[17] This may, in part, stem from the view that many Canadian firms are uncompetitive internationally and require what are effectively state subsidies to maintain productivity and employment levels. Tied aid has been one of the pillars of Canada's aid program and the rationale for its continuation has taken on almost mythic proportions. Effective lobbying by the business sector has helped to embed this perception in official circles. But studies of the domestic impact of aid-tying suggest that the market-penetration and job-creation potential of this device is probably overestimated, and certainly costly in comparison to other mechanisms (Canada 1976b; Hay 1978; Wyse 1983, 6; Hendra 1987).

Despite the unsubstantiated claims regarding the domestic value of tied aid, the business sector pressed the Winegard Committee to maintain current tying levels. This is in keeping with the overarching business conviction that there is a mutuality, rather than a conflict, of interest between aid objectives and Canada's legitimate commercial goals in the developing world.[18] Thus the Canadian

Exporters' Association (CEA) emphasized that in comparison with other aid donors, Canada's program is not trade-driven. Against this assessment is the North-South Institute's estimate that 10 per cent of Canadian exports to the developing world are financed through the aid program—a proportion far larger than many other DAC donors (North-South Institute 1985). The CEA also argued that Canadian exporters were at a disadvantage in LDC markets because of Canada's relative lack of historical ties, whereas some European donors enjoy the benefits of former colonial links. It was especially concerned that untying would help other OECD competitors such as France and Japan whose aid programs are strongly geared towards export promotion. As the CEA brief put it: "The harsh reality is that 'untied' aid stands to aid not the LDCs but competitor suppliers in other industrialized countries" (1986, 6).

Other business-sector demands included increased aid to middle-income LDCs and NICs in view of their trade potential for Canada; a reduction in the proportion of multilateral aid, and its diversion to the bilateral program in view of the poor Canadian record in winning tenders in the IFIs; a continuation of other forms of concessional financing such as *credit mixte* and parallel financing; expanded funding to CIDA's Industrial Co-operation Program (CIDA-INC); the involvement of Canadian chartered banks in expanding lines of credit and *credit mixte* projects; and finally, streamlining and speeding up CIDA's project-planning cycle.[19]

Well before the SCEAIT's review of Canada's aid program, concern about commercial emphasis in other donor programs and about the poor performance of Canadian exporters in LDC markets prompted sustained lobbying by the business sector to increase the commercial emphasis in the aid program. These efforts dovetailed with government perceptions and produced a series of policy initiatives that have addressed business interests by creating a more commercially oriented aid program (Gillies 1988-1989; Adams 1980).

The genesis of these initiatives dates to the late 1970s, when the Liberal government, alarmed by Canada's deteriorating position in LDC export markets, created an Export Promotion Review Committee under the chairmanship of Roger Hatch, an active member of CEA. It provided a forum for policy input by Canadian exporters. The final report, *Strengthening Canada Abroad* (Canada 1979) remains, in many ways, the most commercially aggressive policy statement on the aid program to date. On tied aid, for example, the report supported the business sector's demand that current levels be maintained and agreed with its view that "CIDA has taken an overly philanthropic giveaway approach to aid." The report also recorded an early discussion of the use of ODA funds in commercially driven loan packages (Adams 1980, 27). These early explorations of an expanded aid-trade link were refined in a consultation paper on export financing (Canada 1985b). That report received strong submissions from commercial lobbies, such as the Export Trade Development Board, arguing for an expansion of state-supported export-promotion mechanisms including "soft" ODA funds. Amongst its conclusions, the consultation paper raised the possibility of creating a more aggressive aid-trade fund along the lines of Sweden's Swedfund or the British Aid/Trade Provision.

Despite studies which stress the excessive costs of export credits as instruments to maintain productivity and employment levels (United Kingdom 1982; Raynauld, Dufour, and Racette 1983), the Liberal government set up a formal Aid/Trade Fund (ATF) in its 1984 budget. Surprisingly, however, after initially endorsing ATF and renaming it the Trade and Development Fund (TDF), the present Conservative government scrapped the mechanism in Finance Minister Michael Wilson's 1986 budget. Financial contingencies—a slowdown in the rate of the aid program's growth—rather than a reassessment of the value of TDF, seem to have been a contributory factor in the government's decision. And the aid program will continue to promote domestic business interests through parallel financing and the gradual expansion of corporate services in CIDA.

In addition to the traditional device of tied aid, new forms of aid/trade promotion are being used in Canada. Concessional ODA funds are now being blended into export credit packages to soften the terms of what are essentially commercial loans for large infrastructural projects. Referred to as parallel financing, this mechanism has led to a functional linkage between CIDA and the Export Development Corporation, the state's principal agency for export promotion (Rahman 1985). Between 1978 and 1984, Canada initiated 17 such projects with a total value of $1.1 billion. Since 1984, a further 19 projects with a total value of $2.2 billion have been considered for this type of financing. CIDA has also undertaken co-financing arrangements with multilateral development banks. In the case of Arab/OPEC aid agencies, by 1984, Canada had contributed US$ 905 million towards 35 co-financed projects in 29 countries (Odeh 1984, 21).

Organizational and funding changes within CIDA also reflect a more concerted commercial emphasis in the aid program. A Business Cooperation Branch was created in 1984 to coordinate and extend the agency's links with, and services for, the private sector. Corporate services are now the most rapidly growing sector in CIDA, its budgetary allocation increasing from a modest $27 million in fiscal year 1984-1985 to $45 million in 1986-1987 (*CIDA Yearly Estimates, 1985-86*, p. 7). Free pre-feasibility studies, the development of business contacts in the Third World, and assistance to Canadian firms bidding for tenders in the IFIs, are among the corporate services provided.

These developments attest to the agency's expanding role as an economic-intelligence mechanism for the business community.

2. Parliamentary and Government Response

What impact did the commercial lobbies have on the recommendations of SCEAIT and on government policy? On the issue of tied aid, the Winegard Committee proved to be at odds with business views. It was not persuaded that Canada's high tying levels should be maintained. It observed that "a high fixed tying rule carries a danger of making what Canada has to sell more important in aid decisions than what the poor want and need" (Canada 1987a, 37). Accordingly, the Winegard Report recommended a gradual reduction in tying from 80 per cent to a minimum of 50 per cent of the bilateral aid budget. Critics of the commercial thrust in Canadian aid has been arguing for a substantial reduction for years. Seemingly, they had scored a major victory.

But on the vexed question of aid-blended export credits, the committee took a more equivocal position—one which mirrored the prevailing ambivalence regarding the value of these devices. In seeking to accommodate the opposing viewpoints of the development NGOs and the commercial lobby groups, the committee missed the opportunity to take a clear, unambiguous stand on associated financing. Indeed, in the final analysis, the committee's equivocation amounts to a tacit endorsement of Canada's continuing recourse to these dubious instruments of trade promotion.

The Winegard Report is scrupulously fair in presenting both sides of the argument. On the one hand, the committee recognizes that state-subsidized export credits distort trade, and it concedes that associated financing can be used to finance projects for "what are essentially trade, not development, reasons" (p. 40). The report also acknowledges that "too much pressure for short-term trade benefits from aid will inevitably overlook the poorest countries and peoples " (p. 42).

But on the other hand, the report submerges these concerns beneath more compelling interests. The committee emphasizes that trade promotion is a legitimate interest in Canada's aid strategy and argues, without supplying details, that "there will be occasions when development can be exporter-led, and Canada should not deal itself out through an excessive show of purity" (p. 40). In essence, this amounts to business as usual.

The committee offers two suggestions to restrict mixed credits. First, Canada should continue to work through multilateral channels to phase out these devices. Second, CIDA should carefully assess the development value of such projects against the priorities entrenched in the report's "Development Assistance Charter." Both suggestions are likely to prove ineffective. While the Development Assistance

Committee of OECD has strengthened the transparency of reporting and increased the grant element in these credits to 35 per cent, the voluntary basis of DAC and the absence of effective compliance mechanisms make it very unlikely that associated financing will be phased out by international action. And the "development priorities" in the proposed charter are pitched at too broad a level to offer much protection. The fact is that speed is of the essence in winning export-credit tenders, and the absence of more specific criteria will probably prevent adequate assessment of the developmental soundness of these trade-driven projects.

In sum, the Winegard Report took seriously the arguments of the commercial lobby groups that Canada maintain its export competitiveness, protect its current markets, and penetrate new ones by the use of aid-blended export credits. In so doing, the committee chose to ignore (or overlooked) the available evidence (Mosley 1987, 217; Toye and Clark 1986).[20] It also chose to ignore the view of the Canadian public that aid and trade are separate instruments, and that using aid for trade promotion would be considered "exploitative and immoral" (Decima Research 1985). Attempting to steer a middle course between the positions of the development community and the commercial lobbies creates an inescapable tension—one that is starkly visible when the committee's tacit endorsement of associated financing is juxtaposed with its recommendations to reduce tied aid, and with its plea that Canada loosen import controls on LDC products and exercise leadership in the global management of Third World debt.

The government responded to the Winegard Report with an interim statement (Canada 1987b), followed by a comprehensive "aid strategy", *Sharing Our Future* (March 1988). On aid-trade issues, the government has diluted the modest reforms proposed by SCEAIT. For example, with tied aid there is now a two-tier system. Bilateral aid can be up to 50 per cent untied for disbursements to sub-Saharan Africa and LLDCs in Latin America and Asia. This is in recognition of the importance of local procurement of goods and services in the poorest countries, particularly Africa. But all other Canadian aid recipients are limited to a ceiling of one-third untied aid. Although the government did not elaborate on the reasoning underpinning this two-tier system, the logic is not difficult to discern. A number of the more prosperous, middle-income LDCs, such as Thailand, Cameroon, Jamaica, and Zimbabwe, are countries considered to have good trade potential for Canada. Maintaining a higher proportion of aid to these countries increases the exposure of Canadian firms seeking to expand their sales. In short, the creation of two tiers of "Canadian content" underlines the government's continuing commitment to promote commercial objectives through the aid program.

Equally disappointing is the government's decision not to reduce the level of tied food aid below 95 per cent to allow a recipient to purchase food from a neighbouring LDC with an exportable food surplus. Domestic economic considerations (the plight of prairie farmers and the influence of the Department of Agriculture) underpin the decision not to heed the Winegard Report. Similar pressures may also account for the government's rejection of the committee's proposal that non-emergency food aid not exceed 10 per cent of the ODA budget. In increasing the food aid budget by 5 per cent annually (Canada 1988, 54), the government acknowledges the continuing strength of the agricultural lobbies. At the same time, it overrides its own earlier recognition "that food aid is not always the best form of development assistance, especially when it has the effect of discouraging local agricultural production" (Canada 1987b, 70).

On the issue of mixed credits, the government has accepted the Winegard Committee's recommendation that Canada focus on multilateral efforts to control these instruments, and that development criteria take priority in decisions regarding concessionally financed projects (Canada 1987a, 59). In effect this amounts to little substantive change in current policy.

While demands for a diversion of multilateral aid to the bilateral program and the inclusion of Canadian banks in co-financing and lines of credit were rejected by omission, other demands, such as increased lines of credit (which lower the administrative bottlenecks in delivery) and an expansion of the Industrial Cooperation Program, were accepted. In fact, the doubling of that program to 4 per cent of the total ODA budget represents the largest sectoral increase within CIDA (Canada 1988, 77). It underscores the continuing importance of the commercial dimension in Canadian aid policy.

The relationship between commercial lobby demands, parliamentary Winegard Committee recommendations, and government responses is shown in Table 1. Although the table brings out the mix of acceptance and rejection of commercial lobby demands, the tacit acceptance of export financing as a legitimate objective of the aid program and the government's disappointing position on tied aid and export credits mark the limits of any "Development Charter." The "scorecard" underlines that even in more complex Canadian aid-policy framework of the late 1980s, commercial interests continue to play a powerful, if not dominant role.

Table 1
Commercial Lobbies and the Aid-Policy Process

Demand*	SCEAIT Proposal	Government Response
1. Maintain % Tied Aid	REJECTED: Bilateral: up to 50% untied Food Aid: 10% ceiling (non-emergency food aid) Untying for third country LDC purchases	MODIFIED: Bilateral: (1) 50% untied Sub-Saharan Africa, & LLDCs (2) 33% untied–all others (3) Food 95% tied (no change)
2. Alter Multi/bilat. ODA ratio	REJECTED†	REJECTED†
3. Maintain or Expand Co-financing	ACCEPTED	ACCEPTED
4. Use Banks in Co-financing	REJECTED†	REJECTED†
5. Expand Lines of Credit	REJECTED†	ACCEPTED
6. Expand CIDA-INC	ACCEPTED	ACCEPTED

* Based on Submissions to the Standing Committee on External Affairs and International Trade by the following commercial lobby groups: Canadian Chamber of Commerce, Canadian Exporters' Association, Canadian Bankers' Association, and Canadian Manufacturers' Association.

(†) Denotes rejection through non-discussion

Conclusion

> *The comfortable tradition that external affairs is the prerogative of the Crown is now being rudely disturbed by the pressures of participatory democracy. Canadians are knocking at the door of this country's foreign policy with more than messages: they want in [Independence and Internationalism*, p. 6].

With a budget of $2.7 billion in fiscal year 1987-1988, Canada is now the fifth largest Western aid donor (OECD 1988, 190). As the aid program has expanded, so too have the objectives and the number of players crowding into the policy arena. Human rights have emerged as a new goal of the program. Will its imperatives be heard among the more traditional diplomatic, as well as the newly aggressive commercial, objectives? In this crowded policy environment, the government, in trying to please all, runs the risk of pleasing none. But what is more important, the creation of new instruments as divergent as parallel financing and support for democratic processes, threatens to make impossible any sense of policy cohesion or central purpose. The sustained long-term expansion of Canadian aid has so far reduced the severity of the potential conflicts among commercial goals, human rights, and the basic needs of the poorest groups. But of itself, the "Development Assistance Charter" does little to redress the trade-offs that continue to bedevil the program (Young 1984-1985).

The two stories that I have told concerning Mozambique and the IFIs highlight the creative and influential role that Canadian NGOs can play in altering government policy. While the gains in both cases have been modest, they should not be underestimated. Patient and persistent lobbying has brought new issues to the aid-policy agenda and over the long-term may yet contribute to more enduring changes in the government's policy orientation.

In the case of voting ethics in the IFIs, an initial setback does not mean total defeat. The government is at least clear that more attention must be paid to groups likely to be disadvantaged by adjustment packages. On the tougher question of direct conditionality, the government retains an understandable reticence and remains to be convinced of the value of politicizing the IFIs; the onus is now on parliament to undertake a detailed and persuasive study. In the case of Mozambique, development NGOs must press both Parliament and the bureaucracy for an expanded bilateral program, and possibly for some forms of non-lethal military assistance.[21] In both instances, the evidence suggests that the development lobbies have "broken the attention barrier" and made Ottawa take notice of their case (Kirton and Dimock 1983-1984, 68).

Bernard Wood has observed that the "mutual isolation (and even suspicion) of Canadian-based businesses and NGOs is wasteful and damaging to all concerned" (1987, 3) and has suggested setting up steering committees to explore the potential for closer linkages—through business-sector help and expertise for NGOs designing appropriate-technology projects, for example. While there clearly is scope for closer collaboration, we should not gloss over deep differences in priorities and perspectives. These are likely to surface in the future if human rights objectives clash with trade goals. Indeed, early storm clouds have already gathered. Although the commercial lobby groups have scarcely mentioned the implications of human rights conditionality for the Canadian exporting community, Frank Petrie's comments to *The Financial Post* (November 9, 1987) are representative. As president of the CEA, Petrie was concerned about Canada's abstention in the World Bank structural-adjustment loan to Chile in 1986. He claimed that the government's decision temporarily soured relations between the two countries and observed that "if we traded only with people we liked we wouldn't even be trading interprovincially."

I have tried in this paper to assess the relationship between interest group demands on the one hand and parliamentary recommendations and government policy on the other. Obviously, given the small sample of issues examined, any conclusions will be provisional. The case studies show that sustained lobbying and informed opinion do have political impact. Beyond this, any attempts to ascribe causality from demand to output would be foolhardy. As Kim Nossal reminds us, activity and access do not necessarily imply influence (1985, 176). And as Dewitt and Kirton realistically observe:

> Policy usually emerges as a consensus of opinion and analysis from diverse sources, and interest group intervention is merely one of a number of stimuli. Even when a policy agrees with one group's position, moreover, it is rarely clear whether that group or some other factor . . . made the difference in the government's decision [1983, 178].

These observations apply with special force in the Chile loan decision. While sustained lobbying undoubtedly laid the groundwork, the final decision may have owed more to the ability of External Affairs Minister Clark to prevail over the resistance of Finance Minister Wilson and over the veiled threats of the Chilean government to renege on debts owed to Canadian banks (Page 1987). Similarly, while development NGOs were influential in providing the momentum for a growing aid profile in Mozambique, the parliamentary fact-finding mission and Mr. Clark's own visit were also important. Finally, pressure from other front-line states may have played a very important role in altering official Canadian perceptions and policies (Steven Gibbons, Southern Africa desk, CIDA, personal communication, March 25, 1988).

What does the evidence presented in this paper suggest regarding the claims of statist, pluralist, and dominant-class explanations of development aid policy? It suggests, in the first place, that a strict interpretation of a particular framework cannot account for the nuances uncovered here.

The issue of concessional financing reflects both the government's attempt to address the views of the development community and the realities of maintaining a strong commercial dimension to the aid program. Unmasking the limits of the government's willingness to abandon "legitimate" export-promotion mechanisms in the aid program underscores the continuing appropriateness of a statist framework as the most accurate lens for understanding the formulation of Canada's aid policies. But it is a lens that is in need of some refinement.

Senior state officials do retain considerable autonomy. That autonomy is most powerfully visible in their ability to set boundaries on the policy process. With development aid and human rights, this has meant drawing sharp limits on the principle of "policy transparency."[22] But as one moves from questions surrounding open versus secret decision making toward the broad policy agenda and the "micro-issues" within a policy field, bureaucratic autonomy appears to be less pervasive and is certainly less coherent. It is at these levels that domestic determinants begin to exert their pull on the overall shape or character of the aid program. Nowhere is this more apparent than in the government's acceptance of the linkage, in principle, of human rights and development aid. The addition of this issue to the broader mandate of the aid program is the product of sustained public pressure in the face of considerable bureaucratic resistance (Gillies, forthcoming). These concessions are modest, however, in comparison to the natural alliance that has developed between the corporate sector and state officials. A partial retreat from tied aid merely qualifies, rather than undermines, the strength of that bond.

In short, the state's attempt at pluralist reconciliation is constrained by an incumbent government's quest for political survival which, in turn, is predicated on economic growth. This imperative is the foundation of the privileged position that business develops in the policy arena (Lindblom 1977, 172-175).

But to this assessment should not be added the corollary assumption: that the development NGOs are completely impotent. While not wishing to gloss over the limits of their influence (Pratt 1988), this paper has tried to counter perspectives that dwell gloomily on the impossibility of altering official policies. In sum, I have argued that the so-called "counter-consensus" in Canada's foreign policy community can be more than just vocal.[23] It can also be effective.

Notes

1. The foreign policy review cycle began with the government's green paper, *Competitiveness and Security* (Canada 1985a). It was followed by the report of a Special Joint Committee of the Senate and the House of Commons entitled *Independence and Internationalism* (Canada 1986a), to which the government responded later in the year (Canada 1986b). The foreign aid program was reviewed by the House Standing Committee on External Affairs and International Trade (SCEAIT) (Canada 1987a), to which the government responded in September 1987 (Canada 1987b). The review cycle came to a close with the publication of a new strategy for Canada's aid program *Sharing Our Future*, in March 1988. For a critical assessment of the review process see Nossal (1986, 5-7).

2. Classic statements on the pluralist model of politics are Bentley (1935), Trueman (1951), and Dahl (1982). For a marxist critique, see Manley (1983).

3. For an overview of these analytic frameworks, see Alford and Friedland (1985).

4. There is a small but rich neo-marxist literature on the Canadian state. See, for example, Panitch (1977); Mahon (1977).

5. In 1982, recipient determination was formalized by establishing three funding and aid-delivery categories. Category I constituted "core" recipients and included the bulk of the poorest countries (LLDCs) as well as some anomalies such as middle-income Jamaica, and Zaire, a country with a very poor human rights record. Category II countries included the middle-income LDCs, while Category III countries comprised a residual grouping receiving minimal aid inputs and lacking a formal planning cycle (Rudner 1985, 130-131). In addition to Mozambique, war-torn Angola and Namibia were the other Southern African countries in ODA Category III.

6. In their submission to the Winegard Committee, Oxfam-Canada West urged the government to upgrade Nicaragua as a priority aid recipient. The Montreal branch of the United Church urged the government to reconsider its decision to reopen a bilateral aid program in Guatemala. In the branch's view, the election of

Vinicio Cerezo as president of the country had not altered the level of human rights abuses or the power of the military. The government, on the other hand, viewed Cerezo's election as the "beginning of a democratic process" and hence worthy of Canadian support (External Affairs Minister Joe Clark, *Ottawa Citizen*, November 17, 1987). For a review of Canadian policy in Central America, see Arbour (1988).

7. As many as 300,000 people may have died as a result of, and up to 3.5 million may have been severely affected by, the past six years of war (*The Financial Post*, February 29, 1988). Average per capita income fell precipitously from US$230 in 1982 to US$160 in 1987 (World Bank, *World Development Report*, 1982, 110; 1987, 202). Mozambique recorded a negative growth rate of -14 per cent in 1984. By 1985, this had deepened to -20 per cent. The Mozambican government has estimated that the country's debt-service ratio may be as high as 190 per cent of planned 1987 exports (O'Meara 1987, 74).

8. SADCC estimates that the cost of South African aggression and destabilization was in excess of US$10 billion between 1980 and 1984 (O'Meara 1987, 75).

9. Rehabilitation work on the Nacala railroad is, indeed, now stalled because of the "security problem" (Steven Gibbons, CIDA officer, personal communication, March 25, 1988).

10. In 1985, the 17 countries in the Development Assistance Committee (DAC) contributed US$ 7.5 billion to multilateral institutions such as the World Bank and the regional development banks. Canada's contribution in 1985 was US$ 633.9 million (OECD, 1986, 236).

11. On July 31, 1986, total quotas in the IMF amounted to US$89 billion (*Europa Yearbook, 1987*, p. 74).

12. These included briefs to the House of Commons Standing Committee on Finance, Trade and Economic Affairs, April 1985; to the special committee on reform of the House of Commons, May 1985; and to the joint House-Senate committee on Canada's international relations.

13. In an earlier career, Tom Hockin had been a political scientist with a strong internationalist outlook on Canadian foreign policy issues.

14. Letter dated March 6, 1987.

15. This section draws heavily on the analysis provided in Gillies (1988-1989)) and Brecher (forthcoming).

16. Canadian development NGO and human rights advocacy groups account for over 50 of the written submissions to the Winegard Committee on Canada's aid program. By contrast, only seven commercial lobbies submitted written briefs. See *For Whose Benefit?*, Appendix D (Canada 1987a, 141-162).

17. Canada initially refused to comply with the terms of a 1965 DAC memorandum which exhorted member nations to remove procurement restrictions in aid disbursements. Nor was Canada one of the ten DAC members that joined the 1974 "Memorandum of Understanding on Untying" which allowed for procurements from other LDCs (OECD 1985, 242). The *Strategy for International Development Cooperation 1975-1980* recommended that Third World firms be allowed to tender for Canadian bilateral projects, but the proposal remains unimplemented (Canada 1976a). See also Wyse (1983, 32).

18. Submission of the Canadian Manufacturers' Association to the Winegard Committee, 1986, p. 14. (Mimeo).

19. These details are taken from the submissions of the Canadian Exporters' Association, the Canadian Manufacturers' Association, the Canadian Chamber of Commerce, and the Canadian Bankers' Association to the Winegard Committee reviewing Canada's aid program.

20. As far as I am aware, there are no publicly released studies of the market penetration impact of Canadian parallel-financed projects. When asked if CIDA had monitored the "downstream" effects of aid-blended export projects, a senior official replied that no monitoring had been undertaken because the results would be known in advance—"parallel financing doesn't promote trade" (personal communication, March 12, 1988).

21. As a postscript, it should be noted that Canada has now pledged to supply certain forms of non-lethal military equipment to the frontline states, including Mozambique. In what Robert Mugabe, Zimbabwe's president, described as a "bold stand," Canada will provide "logistical support," including clothing, fuel, spare parts, and communications equipment. The possibility of military-training support has also been broached (*The Globe and Mail*, October 5, 1988). Canadian diplomats, who were apparently taken by surprise in what seems to have been a decision made by Prime Minister Mulroney, during a private meeting with

Mugabe in New York, have emphasized that the official policy of not providing direct military assistance remains intact (*The Globe and Mail*, October 14, 1988).

22. These limits were made clear by the government's rejection of the Winegard Committee's proposed "grid" and of its call for an annual public review of the human rights performance of Canadian aid recipients. See, also, the discussion of this question by William Winegard and Bernard Wood in this volume.

23. As noted earlier, Cranford Pratt has suggested the term "counter-consensus." "A substantial cluster of groups has emerged in the last fifteen years in Canada which are basically, on humanitarian grounds, in profound opposition to many components of Canadian foreign policy" (1983-1984, 117). For survey data examining evidence on the impact of growing state funding on NGO autonomy, see Brodhead and Herbert-Copley (1988, 150). Kirton and Dimock (1983-1984) argue that the Canadian state has coopted counter-consensual groups.

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Between Political Principle and State Practice: Human Rights "Conditionality" in Canada's Development Assistance*

Gerald J. Schmitz †

Résumé

La question des droits de la personne au niveau international ainsi que l'intérêt qu'on leur porte n'ont cessé de gagner en importance dans les discussions relatives à la politique extérieure du Canada, malgré les hésitations continuelles de plusieurs membres des milieux officiels à Ottawa. Depuis environ douze ans, le débat a été concentré et avivé par des propositions visant à lier, de manière directe et concrète, les orientations en matière de respect des droits de la personne à l'usage du levier que représentent les relations extérieures d'un pays, et plus particulièrement à attacher des conditions relatives aux droits de la personne aux programmes d'aide aux pays en voie de développement.

Le grand intérêt démontré par le public et les parlementaires à établir la défense des droits de la personne comme partie intégrante des politiques du Canada en matière de développement international se réflète dans le célèbre Rapport du comité des Affaires extérieures de la Chambre des communes (connu sous le titre de rapport Winegard, du nom de son président), auquel l'auteur a contribué à titre de

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* Parts of this paper draw from a lecture for the human rights training course at the Department of External Affairs in October 1987.

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consultant. Cet article examine les antécédents, le contexte et le contenu de ce rapport de même que la réaction plutôt modérée et équivoque du gouvernement aux recommandations les plus controversées du rapport. L'auteur met en lumière ce que dit le rapport et ce qu'il *ne dit pas* ainsi que la nature véritable des motifs favorables ou opposés à la notion de "liaison". Malgré les progrès réalisés au niveau des orientations, la question de savoir si la politique extérieure devrait être menée en fonction de ce qui fait obstacle ou en fonction des possibilités offertes au développment de l'influence du Canada, demeure non résolue. L'article porte aussi attention au processus opérationnel, difficile mais nécessaire, sans lequel toute la rhétorique des énoncés de principe politiques sur la question des droits de la personne ne se traduira jamais en une pratique cohérente et crédible entre les États.

Introduction

As R.J. Vincent points out in a brilliant recent book, there exists, unequivocally, in contemporary world society a defined corpus of explicit and binding normative principles which, putting humanity before citizenship, makes fundamental claims on the actions of all states.

> What this international law of human rights suggests is that foreign ministers no longer have a choice about the inclusion of human rights. They cannot escape the tension between human rights and foreign policy simply by declaring that the former have no place in the latter. They are obliged to pay attention to human rights whether they like it or not. They are bound, according to the conventions of positivist international law, by their explicit agreements and by custom and practice. This body of doctrine forms part of their social world. There is some latitude in its interpretation, but it is not open to foreign offices to look the other way . . . It is not now enough for a state to be, and to be recognized as, sovereign . . . In the contest between the principle of state sovereignty and the doctrine of universal human rights, neither side has scored a famous victory, but each sets limits to the domain of the other.[1]

The denial of the most basic security and subsistence rights (in effect, the right to dignified human life), in any country, is almost certain to lead to calls for commensurate (usually punitive) action by other states in the international community. Moreover, Canada and other Western democracies have generally accepted the obligations inherent in the major international human rights instruments to protect and promote these basic rights on a global basis. Human rights concepts have, in addition, entered into the everyday public discourse of Canadians on domestic and international affairs. The issue of linking Canadian foreign policy to human rights has never been more timely and compelling, and recently it has focused on the question of attaching such conditions to Canada's aid to developing countries.

This paper will not attempt to survey all of the issues involved in integrating human rights criteria into Canada's relations with the Third World.[2] Rather, it concentrates on the challenges facing policy makers in getting beyond good intentions and breaking new ground. By way of background, I start from the Canadian "learning curve" and the mostly propitious context which has propelled parliamentary committees to adopt successively bolder and more policy-specific approaches to international human rights issues.

The May 1987 Winegard Report on official development assistance (ODA) was a high point in this legislative advocacy. In proposing a formal operational linkage between aid allocations and human rights determinations, the report by the House of Commons Standing Committee on External Affairs and International Trade moved human rights "conditionality" (a term, like the somewhat looser concept of "linkage," carefully avoided in government statements) from the abstract periphery of foreign policy discussions to the centre-stage of a concrete decision process. Governments and their advisers in the bureaucracy have, predictably, balked at the more ambitious recommendations; even sympathetic critics have wondered whether they are predicated on naively idealistic assumptions.[3] Notwithstanding such hesitations and equivocations, some conditioning of long-term Canadian assistance to developing countries on the human rights performance of recipient governments is now firmly entrenched as a legitimate political principle of Canada's foreign policy.

The process of conditionality put forward by the government and the bureaucracy—i.e., confidential cabinet review—leads some human rights activists to suspect a Pyrrhic victory, or, worse, a betrayal of the whole enterprise. There is no reason why this should necessarily be so. Still, it is a critical time for the interested public to follow through, testing the politicians' assumptions and the state's good faith. A human rights policy which promises much but delivers little will not only disappoint the vocal and damage our diplomatic credibility; more importantly, it will fail the very people—the mass of silent, anonymous victims—it was designed to help.

The Canadian Learning Curve in Comparative Context

Canadian involvement in international human rights issues is not a new or particularly surprising development. The early post-war years, which saw the establishment of the United Nations system and the adoption of the Universal Declaration of Human Rights, have been regarded as the golden era of Canada's "middle power" role in world affairs. In the 40 years since, Canadian diplomats, international lawyers, and academics have made notable contributions to the expanding body of international human rights law and convention. The original enthusiasm may have dimmed, and the record of advocacy has been far from constant or consistent, but Canada's participation in human rights fora at the multilateral level has become a respected and expected part of foreign policy practice.

In recent decades, the "domestication" of many international issues[4] has also extended to human rights concerns, at the same time as domestic evolution—notably, the passage of federal and provincial human rights legislation and the constitutional debates leading to a Charter of Rights and Freedoms—has made Canadians more knowledgeable about human rights matters. From the late 1960s on, more public input into the foreign policy process has been welcomed, at least in official rhetoric. The partial acceptance of public relations "glasnost" by foreign policy elites, and the actual results of successive episodes of parliamentary reform and foreign policy review should be viewed with some skepticism.[5] But no one would deny that important changes have taken place in the atmosphere of foreign policy making.

There is also what might be called a "global village" factor at work. Thanks to modern communications technologies, it is hard not to be aware of the scale and scope of affronts to human dignity in the rest of the world. There is much greater exposure to the problems of developing countries and to the numerous violations of human rights in many of these countries. Heightened consciousness is reflected in increased levels of public concern and concrete manifestations of solidarity with the victims of poverty and abuse. A Canada-wide network to press for global human rights has been produced by the mobilization of churches, development NGOs, and groups like Amnesty International. All of this information and purposeful activity has clearly made its mark in educating majority opinion.[6]

Where electors bravely tread, can politicians be far behind? While parliament's quest for foreign policy influence remains sporadic and uneven, one of the merits of recent foreign affairs inquires is to have registered the greatly increased attention to international human rights questions—among ordinary constituents, not just a few organized lobbies. But members of parliament have done more than respond to public pressures; they have been opinion leaders as well.

There has been a parliamentary learning curve reinforcing that of public attitudes, particularly over the past decade. In the decade before that, there had been growing pressure in parliament for Canada to ratify the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. This happened in 1976, the same year they entered into force internationally. The completion of the International Bill of Rights, and the new human rights policy of the incoming Carter administration in the United States which cut aid to several gross violators, galvanized a debate in Canada on the role of human rights standards in foreign policy. This was also a time when North-South issues were prominent and our rapidly expanding aid programs attracted a lot of critical attention.

In 1977, several private members' bills were introduced to prohibit economic assistance (trade concessions as well as aid) to "gross and consistent" violators of human rights. This theme was taken up by Joe Clark, first in opposition and later as prime minister. However, linkage was still only an emerging idea, not a tested practice. The 1980 report of the parliamentary Task Force on North-South Relations did not specifically address human rights. What caused the issue to resurface in a big way in the early 1980s was an intense debate over Central America policy, manifested in several controversial reports of a SCEAND[7] sub-committee on Canada's relations with Latin America and the Caribbean. Its November 1982 majority final report made the case for human rights to be a central preoccupation in Canadian foreign policy towards the region. It recommended attaching a number of basic human rights and human needs/social justice conditions to aid, though not to trade.

Over these years, the standard official Ottawa response was still very reserved. Typical arguments were: aid should not be politicized, linkage would doubly penalize the poor, making human rights judgements is too complex and dangerous, the costs to other foreign policy interests are too high, "quiet diplomacy" is best, and so on. But there was gradual agreement that some conditions *may* be justified *in extreme cases*, citing action taken on Uganda, South Africa, Guatemala, and El Salvador.[8]

The equivocations and continuing ambivalence of Canada's foreign policy establishment are widely shared by diplomatic elites in other countries and by business elites at home.[9] And, indeed, the deeply flawed experience of the United States in attempting to apply human rights conditionalities—sometimes unconsciously ideological but always consciously strategic—to relations with weaker states has been a frustrating object lesson for human rights advocates, while providing an easy target for foreign policy traditionalists and conservative critics.[10] In Great Britain, the last Labour government produced a quite radical document in 1978 that called on the Foreign and Commonwealth Office to apply uniform human rights standards to bilateral foreign relations, but it was aborted by the election of Mrs. Thatcher.[11] Fortunately, there are some positive Western European examples which offer a sounder basis to stiffen Ottawa's spine.

In 1979 the Netherlands government tabled a carefully-elaborated "Memorandum on Human Rights and Foreign Policy" in the Dutch parliament, which argued for a non-dogmatic but systematic approach to human rights linkage. It devoted special attention to ways of synthesizing the basic-needs development priorities associated with socio-economic rights and the classical doctrine of civil-political rights. A similar 1984 document by the Norwegian government made even more explicit the potential for a truly human rights-based approach to international development. Conditionality, which in isolation appears donor-driven, extraneous, and suspect, takes on a new light and compelling moral force when it is subsumed within the very *raison d'être* of an aid program. The satisfaction of basic human needs and the realization of basic human rights become integral links in the development chain, rather than separate rivals. Futile controversies over the primacy of one set of rights over another give way to acknowledgement of the fundamental interdependence of all human rights in the development context.

It would be too sanguine to suggest that the records of highly regarded Northern European donors are problem-free.[12] They do, however, provide empirical grounds, in the form of operational models, for some confidence that a convergence of the international human rights and North-South agendas can get beyond mere rhetoric.[13] Canadian policy makers are, I think, still unprepared to work out the major and pervasive challenge which an integrated human rights/ human development paradigm poses to the foreign policy *status quo*. But before returning to this point at which the decision makers' learning curve seems to be arrested, and to the continuing theory-practice gap, it is important to appreciate the progress which has recently been made.

Understanding the Winegard Report

That *For Whose Benefit?* got as far as it did, in policy terms, was in part a tribute to inspired chairmanship and good timing.[14] A jaded aid-policy community and a new-broom federal cabinet were seeking policy renewal and, more importantly, they were open to direction. Admittedly, the Mulroney government's foreign policy review did not start out as though it would be the next leap forward in Canada's relations with developing countries, much less in integrating human rights more broadly into the external affairs framework. The May 1985 green paper's bland "realpolitik" emphasized resource constraints over moral opportunities.[15] However, this got quickly brushed aside in the second round of public hearings by the special Senate-Commons committee set up to conduct the review. Human rights and development returned as dominant concerns by popular demand.

The June 1986 Hockin-Simard Report, *Independence and Internationalism*, affirmed human rights as a fundamental and integral element of its call for "constructive internationalism" to be the underlying theme of Canadian foreign policy. Specifically, on development assistance the report borrowed the philosophy and repeated some of the language of the 1982 SCEAND sub-committee; in addition, there were upbeat proposals for more government-NGO collaboration, departmental human rights training, and an International Institute of Human Rights and Democratic Development.

After the negative reaction to the green paper, the government seemed to pick up with alacrity on the human-rights-promotion ideas in the report. Much of this was asserted as general principle, with little indication or explanation of how the integration within foreign policy was to work in practice. The agenda of the human rights constituency had been addressed, but functionally it was still rather compartmentalized and off to one side. When the talk turned to trade and defence—the obvious big agenda items—it was not clear how, or even if, human rights entered into the picture. Even on the strongly professed development-human rights linkage in the Hockin-Simard Report, the actual changes were modest and some issues were deferred to SCEAIT's independent review.

The parameters of the Winegard study were much more focused, being limited to the ODA aspects of Canada's relations with developing countries. Within these bounds, the May 1987 final report attempted to be as in-depth and comprehensive as possible. On human rights, the report had seven main elements. (I will return later to what it did *not* say.) They were:

1. A set of "guiding principles" to ensure that the application of human rights values to developing country situations is properly conceived.
2. An explicit operation framework (similar to CIDA's Women in Development program) to implement the guidelines and to assist policy makers and administrators.
3. A very basic decision "matrix" to connect, on case-by-case country basis, established human rights standards with the range of policy responses appropriate to different human rights situations.
4. A transparent process of regular annual reporting and review to satisfy the public, through parliament, that decisions taken on human rights grounds are correct and consistent with the guidelines.

5. A heavy emphasis on positive human rights promotion to include specific targeted initiatives such as the above-noted institute.
6. An explicit link between human rights, development and demilitarization, to include a prohibition on Canadian arms exports to any country ineligible to receive direct government aid on human rights grounds.
7. The integration of a "human rights is part of human development" perspective into all aspects of ODA policy and programming—in determining eligibility and allocations, in project and program design, in policy dialogue (multilateral as well as bilateral), in evaluation, in field operations, in education, and so on. This message runs throughout the Report.

The formal mechanisms of policy conditionality, which are at the core of Chapter 3 of the report, have elicited the most controversy and therefore bear further elucidation. Their theoretical justification can be summarized in the following propositions:

- There is now a global consensus on certain basic minimum security and subsistence rights. No country's government can legitimately argue that it has a sovereign right to infringe these universally-guaranteed rights. The protection of basic rights is an obligation of all states. The international community has not only a right but a duty to intervene in cases of severe violations.
- Genuine development cannot proceed without a minimal respect for basic human rights. "Development" includes not just economic growth, but measures of human welfare, social equity, and political participation. ODA, whatever its intrinsic merits, will not be effective in circumstances in which human rights are systematically abused.
- Canada's long-term foreign policy interests are *not* served by doing business (even the "helping the poor" kind) with governments with terrible human rights records. A strong stand in favour of human rights is the wiser investment in future relations with the peoples of other nations.
- The Canadian public will not support an aid program that ignores human rights concerns. Many of the strongest supporters of increased ODA spending are also those most concerned about human rights questions. Aid loses its moral force with the public if it is tarnished by association with disreputable regimes. The demand for accountability cannot be just fiscal; it must also include the human factor.

The case against a more explicit ODA-human rights linkage (analyzed in the final section of this paper), is much weaker intellectually, yet remains institutionally deeply entrenched. The reason, so simple as to be obscured in official responses, is that a successful human rights policy framework *ought* to make the state and most of its clients very uncomfortable. Human rights advocates are almost by definition idealists and troublemakers. They expect a defensive reaction which, in the case of the Winegard Report, was unfortunately compounded by some misunderstanding and distortion of its key recommendations. At no point, for example, did the report say that all Canadian ODA should be cut off to any country. In fact, it was argued that NGOs should be able to use ODA to assist victims of poverty and repression in any country, including some now declared ineligible. The government rejected this added flexibility as too risky.

Furthermore, the report did *not* say that human rights should supersede all other considerations. It called for unconditional compassion in emergencies, for assessments to take into account the overall developmental context, and for human rights concerns to serve development goals. While "human rights" refer to uniform international standards, these should not be regarded as narrow, gratuitous or adversarial legalisms to be imposed on others. Rather, the emphasis should be as much as possible on making positive connections to development, at the same time recognizing that in some cases, hopefully a diminishing number, punitive measures at the state-to-state level cannot be avoided. A posture of "seeing no evil" jeopardizes even good projects by putting the very integrity of the aid program at risk.

As for the contentious scheme of country review and classification proposed to anchor the report's operational framework, it did *not* call for a rigid system of "report cards," to use the misleading language of some commentaries. The committee specifically rejected the imperial style of U.S. State Department reports in favour of the much more constructive and development-oriented approach being tried in Norway.[16] Even less was there a suggestion of instituting anything like the aggressive, slanted grading systems one finds in Charles Humana's *World Human Rights Guide*, assessments by Freedom House and the like.

The committee's message, simply put, was, first, that basic human rights observance is an essential condition of good development and therefore of good development aid. It is not an Olympic competition arranged for the benefit of Western donors *qua* judges.[17] Nevertheless, as the committee then also realized, judgements, however fallible, *do* have to be made. And they are intrinsically more difficult for governments loaded down with all sorts of foreign policy baggage than they are for international NGOs such as Amnesty International (AI).

Amnesty, for example, produces annual country reports which are often highly negative, yet it claims to be "strictly impartial. It does not work against governments, only against human rights violations."[18] Suppose, as is commonly the case, it is the government that is behind the worst violations. Are AI members really neutral towards that government? At any rate, this is a pretension that no government could maintain if it were to similarly speak out against human rights violations in another country. How, for example, could Canada claim that in working against *apartheid*, it "neither supports not opposes" the South African government?

Amnesty's *1987 Report* continues:

> Amnesty International is often asked to compare the human rights records of different countries. It does not and cannot do this. Government secrecy and censorship obstruct the flow of information from many countries and impede efforts to verify allegations. Statistical or other generalized comparisons can never measure the impact of human rights abuses on the victims, their families and the societies of which they are part. Comparisons of governments' human rights practices can be manipulated and misused for political ends.[19]

True enough. But in scoring a point, this also misses the point that any comparative criterion, any judgement, not to mention many excellent goals (e.g., "development," "democracy," "freedom"), can be and regularly is so manipulated. This is, however, no reason to throw out the baby with the bath-water. An international NGO, disclaiming all responsibility for policy decisions, may be able to wash its hands in this way. But governments have no such luxury. They have to make all kinds of ODA choices. If human rights are to be a real factor in those choices, not just a rhetorical ornament, comparative evaluations have to be made.[20] The undeniable risks of manipulation (not to mention inconsistency and other sins) are precisely why the Winegard Committee insisted on some public disclosure in the form of an annual review of the actions taken in the light of partner countries' human rights situations. The purpose of the reporting process is not to produce damaging report cards, but to keep the government (and the bureaucracy) both vigilant and honest by exposing its assessments to independent scrutiny.

The government's reasons for rejecting the committee's framework appear more sober and solidly-based than they actually are. According to the response:

> The judgement implicit in the use of such a grid are too subjective. The grid would not adequately take into account the vast number of situations where violations of human

> rights are worrisome, but where they are at the same time unequal, applying only to some aspects of civil and political rights or to selected areas of economic, social and cultural rights. Moreover, the impact of such a grid would be essentially punitive and judgmental rather than positive and developmental.[21]

How valid is this "a priori" conclusion? After all, two of the four "boxes" in the suggested matrix are human rights "satisfactory" and "positive." The extreme "negative" case invokes an international standard against gross violators that is already used by the government. It follows that the fuss is really over one box—"human rights watch"—which the report describes as "cases of lesser or variable concern in which serious allegations have been made but there are many gray areas and development progress is still possible. Any direct bilateral assistance would be very carefully targeted and monitored."[22]

No "report cards" here, and lots of flexibility. But no doubt about it, any human rights report listing countries would be bound to raise hackles and generate controversy at home as well as abroad. Business and trade organizations would have objected to a public "watch list" because of the harm it might do to developing commercial relations in some countries. The committee's point, of course, was that to have good relations that actually do some good, and not just to make good business deals, sometimes you have to start by developing respect for human rights. There is nothing implicitly "subjective" or "essentially punitive" in this premise.

To sum up, what the Winegard Report *did* say was that the government should report regularly to parliament on human rights situations which are relevant and significant in ODA terms. The report also called for a major decentralization of CIDA personnel to the field and for a bottom-up evaluation process. With this in place, the committee expected the Department of External Affairs and CIDA to coordinate the gathering of intelligence on human rights from the field level, in close consultation with operating NGOs, and to feed that back to the headquarters policy units. They, in turn, would be responsible for producing each year an "ODA-Human Rights Review" of significant developments and Canadian actions. Country situation reports on human rights would give guidance, not "scores," by documenting as fully and as fairly as possible the human rights information that the political level clearly needs if it hopes to make sound decisions based on a consistent, transparent human rights policy.

The classification system suggested in the Winegard Report was, in short, a device to ensure the continuous follow-through from human rights principles in general to Canadian ODA practice in particular.

Its graduated continuum of policy responses was designed to firm up that resolve and to assist the government, parliament, and the public in the difficult task of making considered, informed decisions about the necessary human rights conditions of Canada's development assistance partnerships.

Unfinished Business: The Aid-Rights Calculus in the Foreign Policy Decision Process

The government now affirms, however guardedly, as a policy principle that respect for international human rights norms should be a determining factor in decisions on Canadian aid. The new strategy unveiled in March 1988, *Sharing Our Future*, states that the human rights records of ODA recipients will be taken into account in cabinet's annual review of country programs. Yet the whole process remains ambiguous as well as mistrustful of the continued stress on confidentiality. Even when it is conceded to selectively divulge information to members of parliament, the government would prefer doing so on an *in camera* basis. How much, then, can be expected to change in practice?

During the past decade, the government has been under intense pressure to pay more attention to human rights concerns. There has been movement on principles and occasionally action has followed, but the results still seem spotty and ephemeral. In the wake of the human rights education of parliament and the attentive public, a heavy burden has fallen on the state. Critics see a need to overcome the ingrained executive biases and the caution, perhaps also inertia, that is part of diplomatic/bureaucratic culture. Foreign policy elites, on the contrary, are more likely to see this as a valuable antidote to publics and politicians getting carried away with their own good intentions.

How persuasive are the arguments against a stronger ODA-human rights linkage? Let us examine some of the most common:

1. Policy conditionality of this sort is an attack on sovereignty, and therefore violates both the principle of self-determination and the stability of a state-centric system of international relations. While this remains a serious objection, it is losing force given the growing constraints on sovereignty in the global political economy and the acceptance of transnational legal regimes in a number of areas.
2. There is the charge of "moral imperialism," as Ferdinand Marcos once described Jimmy Carter's human rights policy. According to this argument, Western donors have simply found a convenient new stick with which to browbeat poor countries, never looking at the beam in their own eye. Human rights (unlike charity?) should begin at home. There

can be some truth in this charge when "human rights" is employed as a selective foreign policy weapon. It can also be a lame excuse used by elites to justify repression.

3. A related argument is that cutting aid to alleged human rights violators is a facile and cheap form of moral leadership that actually hurts the poor because it penalizes them along with their governments, making them doubly victims. In other words, it does not help them; it only makes us feel good. This argument can be turned back on itself when aid continues to flow to oppressive governments, ignoring the voices of the poor who hunger for justice not handouts.
4. It is also asserted that "economic sanctions never work." Compared to what is not always clear. This could be debated forever, but it should be noted that some scholars have effectively challenged the conventional wisdom.[23] There is also an equally long and valid debate about how much "symbolic" gestures are worth. Are they empty, or sometimes simply necessary?
5. If all else fails to deter, there are always the conceptual and methodological obstacles:
   - human rights are too hard to define precisely
   - it is too hard to make unbiased judgements, or to come up with indicators that are cross-culturally valid
   - human rights comparisons are inevitably suspect on political or other grounds
   - states have too many other interests to be able to be trusted as moral judges.

   This is essentially the "realist" position. It holds that wielding the "human rights" axe is simply a too high-risk and high-cost adventure. Foreign policy is better off with more modest aims and with techniques which conserve diplomatic restraint and discretion.[24]

The Winegard Committee saw these impediments but refused to be paralyzed by them. In effect, it decided that the risks of taking human rights seriously in future ODA decisions *were far outweighed by the risks of not doing so.* Evaluating, with some critical objectivity, the human rights performance of other, less fortunate countries *is* an extremely complicated and delicate undertaking. It is not, as several contributors to this volume have made plain, an impossible dream. Rhoda Howard has referred to our improving capacity to research international human rights compliance. Tim Ryan has urged better use of NGOs in direct contact with the victims of abuses.[25] It is noteworthy that the Netherlands and Nordic countries have a much more highly-developed system of drawing on expert human rights advice and involving non-governmental actors in ODA decision-making than Ottawa has yet been prepared to accept.

Terry Keenleyside's paper (also in this volume) makes another crucial point about aid-rights linkage: it must be predicated on the political will to complete the thoroughgoing reform and renewal of aid policy begun by the Winegard Report. Human rights conditionality will be spurious as well as unmanageable if it becomes just another domestic football tossed on to an already crowded field. It is worrisome, therefore, that *Sharing Our Future*, while it agrees to creating a new policy unit inside CIDA, does not elaborate any philosophy of human rights or any assessment framework beyond what already exists. In its concern to protect cabinet, discretion, and to balance multiple interests, the strategy leaves a very large vacuum.

The challenge of making the Canadian aid program an instrument of human rights promotion is not primarily technical or organizational; it is political in the highest sense of "statecraft." Canadian policy on human rights and development, if it is to make a real difference in the world, has to take the leap from well-meaning principle to coherent and effective practice. Otherwise, will not the familiar Ottawa refrain come back: human rights if necessary, but not necessarily human rights? With timely leadership, encouraged by public and parliamentary diligence, Canada's aid to developing countries may yet be spared such a desultory compromise.

Notes

1. R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press in association with the Royal Institute of International Affairs, 1986), pp. 130-131. See also James Fawcett, "International Human Rights: A New Political Philosophy in Foreign Policy," *Journal of Legislation* 8 (1981), pp. 220-229; R.J. Vincent, ed., *Foreign Policy and Human Rights: Issues and Responses* (Cambridge: Cambridge University Press, 1986); Richard P. Claude and Burns H. Weston, eds., *Human Rights in the World Community* (Philadelphia: University of Pennsylvania Press, forthcoming).

2. For a fuller treatment of these issues, see Gerald Schmitz and Victoria Berry, *Human Rights: Canadian Policy Toward Developing Countries* (Ottawa: The North-South Institute, December 1988).

3. David R. Morrison, "Canada and North-South Conflict," in *Canada Among Nations: A World of Conflict/1987*, ed. by Maureen Appel Molot and Brian W. Tomlin (Toronto: James

Lorimer and Company, 1988), p. 142. Most academic commentators have nonetheless supported the committee's view and expressed disappointment with the weak government response. See Cranford Pratt, "Ethics and Foreign Policy: The Case of Canada's Development Assistance," *International Journal* 43 (Spring 1988), pp. 290-292; and Nasir Islam, "For Whose Benefit? Smoke and Mirrors: CIDA's Development Assistance Program in the 1980s," in *How Ottawa Spends 1988/89*, ed. by Katherine Graham (Ottawa: Carleton University Press, 1988), p. 224.

4. Cf. the seminal analyses by Denis Stairs, "Publics and Policymakers: The Domestic Environment of Canada's Foreign Policy Community," *International Journal* 26 (Winter 1970-1971), pp. 221-248; "Public Opinion and External Affairs: Reflections on the Domestication of Canadian Foreign Policy," *International Journal* 33 (Winter 1977-1978), pp. 128-149.

5. See my "Parliamentary Reform and the Review of Canadian Foreign Policy: Where to Now?," paper presented to the annual meeting of the Canadian Political Science Association, Hamilton, June 1987.

6. A detailed poll conducted for the North-South Institute in October 1987 showed strong support for Canada taking firm action on serious international human rights violations. The emergence of human rights as a public foreign policy priority was confirmed by my own poll of prior attitudes among students in my third-year Canadian foreign policy course at Carleton University. Four-fifths disagreed with the statement "When it comes to Canada's relations with other countries, trade is more important than worrying about human rights." On the specific question of aid conditionality, a 1988 Decima Research Report to CIDA on "Public Attitudes Toward International Development Assistance" revealed that 67% of respondents think Canada should spend aid monies on "countries whose governments respect human rights," but only 53% believe this is now a factor in aid allocations. Interestingly, 69% would *not* condition aid on countries having "democratic governments."

7. The House of Commons Standing Committee on External Affairs and National Defence was reorganized as the Committee on External Affairs and International Trade (SCEAIT), following a major overhaul of parliamentary rules in February 1986.

8. The evolving official position can be traced in various ministerial statements, especially the addresses of successive secretaries of

state for External Affairs and ministers of External Relations to previous annual conferences sponsored by the Canadian Human Rights Foundation on the theme of human rights and Canadian foreign policy. For critical appraisals of Ottawa's stance, see Margaret Doxey, "Human Rights and Canadian Foreign Policy," *Behind the Headlines*, no. 37:4 (Toronto: Canadian Institute of International Affairs, 1979); T.A. Keenleyside and Patricia Taylor, "The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma," *Behind the Headlines*, no. 42:2 (Toronto: Canadian Institute of International Affairs, 1984); Linda Fung, "Human Rights and Its Position in Canada's Foreign Aid Policy, " *Rights and Freedoms* (Summer 1985), pp. 5-10; Robert Matthews and Cranford Pratt, "Human Rights and Foreign Policy: Principles and Canadian Practice," *Human Rights Quarterly* 7 (May 1985), pp. 159-188; Matthews and Pratt, eds., *Human Rights in Canadian Foreign Policy* (Montreal: McGill-Queen's University Press, 1988). See also Irving Brecher "Foreign Aid and Human Rights," *International Perspectives* (Sept./Oct. 1985), pp. 23-26; and Terrence Keenleyside, "Foreign Aid and Human Rights," *International Perspectives* (March/ April 1987), pp. 15-20. On the growing role of parliament, see Cathal J. Nolan, "The Influence of Parliament on Human Rights in Canadian Foreign Policy," *Human Rights Quarterly* 7 (August 1985), pp. 373-390.

9. Private representations and business briefs to the Winegard Committee underlined the unease over human rights. R.J. Vincent deftly exposes how the warnings sounded by "the freemasonry of diplomacy [and] the fraternity of free trade" inhibit taking human rights seriously (*Human Rights and International Relations*, pp. 132 ff.).

10. The Carter human rights policy did, to its credit, spur a great deal of innovative thinking. See, for example, Jorge Dominguez et al., *Enhancing Global Human Rights*, 1980s Project/Council on Foreign Relations (New York: McGraw-Hill Book Company, 1979); Paul Newberg, ed., *The Politics of Human Rights* (New York: New York University Press, 1980). In the 1980s, however, U.S. human rights policy has been in some disarray, eclipsed by both the liberal critique and the neoconservative counter-attack. For the former, see David Carleton and Michael Stohl, "The Foreign Policy of Human Rights: Rhetoric and Reality from Jimmy Carter to Ronald Reagan," *Human Rights Quarterly* 7 (May 1985), pp. 205-229. The latter can be found in Roger Pilon, "The Idea of Human Rights," *The National Interest* (Fall 1986),

pp. 95-101; and Irving Kristol, "'Human Rights': The Hidden Agenda," *The National Interest* (Winter 1986/87), pp. 3-11.

11 Vincent, *Human Rights*, pp. 143-144.

12. Inevitably, there are tensions between the foreign policy professionals and the pressures for louder advocacy from society at large. The state is also prone to apply a different standard to its traditional bilateral partners (especially former colonies). The problem of "clientism" is duly noted in Peter Baehr, "Concern for Development Aid and Fundamental Human Rights: The Dilemma as Faced by the Netherlands," *Human Rights Quarterly* 4 (Spring 1982), pp. 39-52.

13. In the case of Norway, a Human Rights Project, in cooperation with the Programme for Human Rights of the Christian Michelsens Institute (CMI), has since 1985 produced yearbooks on human rights conditions in countries receiving Norwegian aid. The Norwegian Institute of Human Rights, established in January 1987, has been collaborating with the CMI in continuing to advance this project. The research is carried out independently, but with the financial support and active cooperation of the Ministry of Foreign Affairs. Furthermore, this initiative has now expanded into a joint Nordic effort, to which in future researchers from other donor countries including Canada may contribute. The recently-published third edition of the yearbook, *Human Rights in Developing Countries 1987/88*, was co-produced with the Danish Centre of Human Rights, created by the Danish parliament in May 1987. A forthcoming fourth edition will include Dutch participation. The Winegard Report's hope for a more common and objective framework for human rights assessment may be on the way to becoming reality.

14. Many other parliamentary reports have received more media attention; none in recent years has been better received by the government. Indeed, if one reviews the history of reports from foreign policy committees, *For Whose Benefit?* emerges the clear winner in terms of policy influence.

15. *Competitiveness and Security: Directions for Canada's International Relations* asked only one question on human rights, evading any substantive comment on its place in foreign policy.

16. *For Whose Benefit?*, p. 28. The committee, however, left the responsibility for producing an ODA-human rights review with the government. A legitimate criticism may be that it did not go further in specifying a role for independent research institutions.

Compared to what exists in Europe, the current lack of capacity in Canada to investigate human rights abroad is at least cause for serious reflection.

17. Humana's *Guide*, first published in 1984 (New York: Pica Press), is replete with dubious methodology. His comprehensive assessments rate Saudi Arabia, at 29%, as worse on the human rights scale than Chile, at 37%; summary assessments give Honduras a "fair" rating, whereas Nicaragua's is "poor." An expanded 1986 edition of the *Guide*, put out by *The Economist* and Facts on File Publications, employs a more elaborate ratings algebra and includes a few socio-economic rights measures, but the same biases prevail. One has to wonder, too, about the imagery projected in a recent issue of *The New Internationalist*, "Running for Rights: A New Internationalist Olympics," (January 1988).

18. *Amnesty International Report 1987* (London: Amnesty International Publications, 1987), pp. 1-2.

19. Ibid.

20. In addressing "'the problematics of human rights assessment," Tom J. Farer, former president of the Inter-American Commission on Human Rights, correctly observes that: "The comparative severity of present or prospective violations being one factor influencing choice, comparisons will be made with or without the aid of human rights monitoring bodies." "Looking at Looking at Nicaragua: The Problematique of Impartiality in Human Rights Inquires," *Human Rights Quarterly* 10 (May 1988), pp. 144-145.

21. Government of Canada, *Canadian International Development Assistance: To Benefit a Better World: Response of the Government of Canada to the Report by the Standing Committee on External Affairs and International Trade* (Ottawa: Minister of Supply and Services, September 1987), p. 52.

22. *For Whose Benefit?*, p. 28.

23. See especially David Baldwin, *Economic Statecraft* (Princeton: Princeton University Press, 1985).

24. Kim Richard Nossal stresses the continuing hold of the doctrines of national sovereignty and statist "realpolitik." "Although policy-makers have an interest in human rights, their perceptions of Canadian interests create significant self-imposed constraints on policy alternatives. These perceptions dampen enthusiasm for activism and greatly reduce the government's

interest in grasping the nettle." ("Cabin'd, Cribb'd, Confin'd?: Canada's Interest in Human Rights," in Robert Matthews and Cranford Pratt, *Human Rights in Canadian Foreign Policy*, p. 57.) In my experience, these inhibitions are more resistant to change at the bureaucratic than the political level, extending even to those parts of the Department of External Affairs charged with carrying out human rights duties.

25. This is not an unexplored field. See, for example, Ved P. Nanda, James R. Scarritt, and George W. Shepherd, eds., *Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies* (Boulder, Colo.: Westview Press, 1981); Jack Donnelly and Rhoda E. Howard, "Assessing National Human Rights Performance: A Theoretical Framework," *Human Rights Quarterly* 10 (May 1988), pp. 214-248; Richard P. Claude and David R. Davis, "Political Legitimacy at Risk: The Emergence of Human Rights in International Politics," paper presented to the World Congress of the International Political Science Association, Washington, D.C., September 1, 1988. On the general theme of development-human rights linkage, other useful sources include: *Development, Human Rights and the Rule of Law*, report of a conference convened by the International Commission of Jurists (Oxford: Pergamon Press, 1981); Martin Rudner, "Human Rights Conditionality and International Development Co-operation," study prepared for CIDA (Ottawa, January 1983); George W. Shepherd and Ved P. Nanda, eds., *Human Rights and Third World Development* (Westport: Greenwood Press, 1985); David P. Forsythe, ed., *Human Rights and Development: International Views* (London: Macmillan, forthcoming) (the contents of this important book are previewed in Forsythe, "Human Rights and Development: Emphasizing Political Culture," paper presented to the Washington IPSA World Congress, August 30, 1988).

VIII.

Special Contributions

Keynote Address:*

Les droits de l'Homme au niveau international : un portrait de la situation au Tiers-Monde

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L'honorable Madame Rose Francine Rogombé

Summary

The general notion of "human rights" is not as foreign to African political cultures as one might think. Various African societies integrated such rights into their laws; although they were expressed in diverse ways, they were clearly formulated, recognized, and protected with the same force as they are today. However, these rights existed in African societies within the hierarchy of the caste to which an individual belonged. As well, in Africa the concept of the individual, and therefore of individual rights, is seen in a radically different manner than in Western societies: it is absorbed within the archetype of the totem or the common ancestor, and is founded in the community. Finally, individual rights are inseparable from the idea of obligation towards the society. Colonization, forced labour, and slavery of Blacks disturbed the harmony of traditional society.

Further, formulation of various declarations of human rights has been primarily concerned with the struggle against Nazism; African countries played a peripheral role in drafting the declarations, and for many years citizens of these countries were outside the purview of their application. During the colonial period, the rights recognized by the Universal Declaration, as well as economic, social, and cultural

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* Delivered at the "human rights" symposium, March 28, 1988.

rights, were subject to restrictions among African peoples, and this was justified by their rulers in the name of public order, safety, and morality.

As Africa was liberated, the new states adopted constitutions respecting human rights; however, their primary concern was economic development rather than rights and freedoms.

The creation of regional human rights commissions in the Third World, such as the Inter-American Commission of Human Rights and the Arab Regional Commission of Human Rights, has been a valid solution for African countries, in that these bodies have ensured some continuity between moral traditions and principles and modern notions of rights. As well, these regional organizations respect the principle of conciliation and negotiation, which is favoured by Africans over the principle of litigation. Finally, third-generation rights, along with economic, social, and cultural rights, have a wider scope, including notably the "right to development," to which Third World countries attach great importance.

The lack of human rights found today in Africa, even within "progressive" regimes, is linked to the absence of a democratic solution to conflicts between factions and ethnic groups seeking power, to the misery and underdevelopment in the Third World, and to the lack of response by better-off nations to the cries for help from poor countries.

However, the Third World countries have stressed, within the forum of the United Nations, the necessity of North-South dialogue, which has resulted in adoption of the rights to development. They must also organize cooperation and integrated economic development among themselves, through their regional organizations, and this will promote the evolution of Third World political institutions towards pluralism and democracy. The tendency of Western nations to associate respect for human rights with development aid has been rejected by African countries, since violations of human rights do not occur solely among the nations seeking help.

Gabon has always considered human rights as the foundation and the goal of its policy of integrated human development. Gabon is a political democracy, with a peaceful social climate characterized by a total lack of political prisoners; its government plays an active role in supporting neighbouring countries in their struggle against drought and war. As well, Gabon has a policy of actively promoting the rights of women at all levels of society.

Monsieur le président de la Fondation canadienne des droits humains,
Professeur Brecher,
Honorables délégués,
Mesdames et Messieurs,

Le Gabon, à travers ma personne, éprouve une légitime fierté pour l'honneur qui lui est fait de prendre la parole à ce symposium sur les droits humains, le développement et la politique étrangère, que la Fondation canadienne des droits humains et le Centre d'études sur les régions en développement de l'Université McGill organisent pour commémorer le 40ième anniversaire de l'adoption par les Nations Unies de la Déclaration universelle des droits de l'Homme. Le choix d'un tel thème de réflexion exprime la foi profonde de votre pays dans l'avènement et le développement des droits de l'Homme.

Jusqu'à récemment, la notion de droits de l'Homme a paru tellement éloignée des préoccupations des pays du Tiers-Monde, que certains ont pu penser qu'il existe un antagonisme irréductible entre le Droit et le Tiers-Monde. Pourtant l'étude la plus superficielle de nos sociétés anciennes prouve que nos civilisations précoloniales avaient édifié une construction juridique garantissant la plupart des droits aujourd'hui revendiqués.

Faute de documentation précise sur l'Asie et l'Amérique Latine dans les périodes précoloniale et coloniale, je me bornerai à examiner la situation qui était celle de l'Afrique avant la colonisation et pendant la colonisation.

I. L'évolution du principe des droits de l'Homme dans les pays du Tiers-Monde

Les droits de l'Homme dans la période précoloniale

Nombreux sont les auteurs qui ont toujours considéré qu'il n'a jamais existé dans les sociétés africaines un système élaboré ayant pour but de promouvoir et de protéger les droits de l'homme africain. On estimait en effet qu'un paysan ne pouvait pas, par exemple, apprécier la liberté d'expression, alors que la possibilité de manger aurait été pour lui beaucoup plus précieuse.

Cette conception procède d'une idée généralement répandue et paraît, à priori, fondée. En effet, elle met en relief le fait que le souci de subsister ou d'aménager la qualité de la vie passe bien avant la préoccupation de jouir des droits et libertés de la personne humaine.

Accepter cette assertion comme conclusion serait hâtif et même faux pour ce qui concerne l'Afrique précoloniale; s'il est vrai que la satisfaction des besoins dans les sociétés insuffisamment développées est chose aisée, ces besoins étant réduits à l'essentiel, on peut affirmer, en tout état de cause que l'Afrique précoloniale avait un système adapté de droits et libertés. Certes, ce n'était guère la grande diversité des droits et libertés tels qu'ils sont analysés et décrits de nos jours; ils n'en étaient pas moins reconnus et formulés avec la même netteté qu'aujourd'hui. Mais on peut, en les décrivant tels qu'ils étaient, retrouver une parenté certaine qui les relie indiscutablement au système actuel des droits de l'Homme. Ces droits étaient reconnus et protégés.

Toutefois, l'exercice de ces droits était hiérarchisé en fonction de la classe sociale ou de la caste à laquelle appartenait l'individu.

Avant de passer en revue quelques-uns de ces droits, il serait peut-être intéressant de nous attarder quelque peu sur la conception africaine des droits de l'Homme.

Alors que la conception européenne des droits de l'Homme est constituée d'un ensemble de principes essentiellement destinés à être invoqués par l'individu contre le groupe auquel il s'oppose, en Afrique précoloniale il en est autrement. En Afrique, l'individu, absorbé par l'archétype du totem, de l'ancêtre commun ou du génie protecteur, se fond dans le groupe. Comme l'a remarqué le professeur Collomb, exister en Afrique "c'est renoncer à l'être individuel, particulier, compétitif, égoïste, agressif, conquérant... pour être avec les autres dans la paix et l'harmonie avec les vivants et les morts, avec l'environnement naturel et les esprits qui le peuplent et l'animent."[1]

Il faut aussi noter que dans l'Afrique précoloniale, les droits de l'Homme sont inséparables de l'idée de devoir. Ils se fondent dans un rite auquel il faut obéir parce qu'il commande comme un impératif auquel on ne peut déroger.

Si l'on a présentes à l'esprit ces quelques données de la sociologie africaine, on peut alors aisément choisir à titre d'exemple quelques droits fondamentaux, et montrer qu'ils étaient bien reconnus dans l'Afrique précoloniale.

Arrêtons-nous un instant sur quelques-uns de ces droits et libertés.

Le droit à la vie

En raison de leurs croyances religieuses traditionnelles, les Africains respectent scrupuleusement la vie, même s'il s'agit de celle des animaux. Elle n'est d'ailleurs pas interrompue par la mort.

La liberté d'expression

Elle était reconnue mais ne s'exerçait que dans le cadre des institutions coutumières, en application des règles particulières qui prévalaient au sein de chaque groupe.

La liberté religieuse
Protégée, elle était interne à la tribu ou à l'ethnie. La pratique religieuse est liée au culte des ancêtres.

La liberté d'association
Elle était quasi totale. Les Africains se retrouvaient dans des groupements de toute nature. Il y avait des associations de travail, des associations occultes, des associations de divertissement, de classe d'âge, de jeux, etc.

La liberté de circulation
La liberté de circulation d'un territoire à un autre était un principe sacré, que seule l'insécurité des voyages pouvait limiter. L'hospitalité légendaire des Africains, aujourd'hui, n'en est qu'une manifestation.

Le droit au travail
Travailler était un droit et un devoir à la fois. Dans la société africaine à structure socialiste, le travail s'exercait principalement au profit du groupe mais également pour le compte de l'individu.

Le droit à l'éducation
Il s'exprimait sous la forme d'un devoir mis à la charge de la communauté pour faire de chaque enfant un élément adapté et utile au groupe. L'éducation incombait non seulement aux parents, mais également à toute la famille et même aux amis et aux voisins.

La colonisation a perturbé l'harmonie de la société traditionnelle et dénaturé les rapports sociaux qui lui servaient de fondement, en pratiquant la traite des Noirs et le travail forcé et, d'une façon générale, en déniant aux Africains le droit de jouir des droits et libertés de la personne humaine.

Les droits de l'Homme pendant la période coloniale

Monsieur Keba M'baye nous rappelle que la vocation universelle des droits de l'homme avait amené Léopold Sédar Senghor à mettre en garde les négociateurs européens de la Convention du 4 novembre 1950, dont l'article 63 écartait les territoires non métropolitains du champ d'application de ses nouvelles dispositions.[2] Le futur président de la République du Sénégal, alors membre du Parlement français, les exhortait à éviter d'élaborer une déclaration des droits de l' "homme européen." Malheureusement, l'organe ministériel du Conseil de l'Europe ne crut pas devoir suivre les recommandations du député du Sénégal, et cela malgré le préambule de la Déclaration universelle des droits de l'Homme, qui proclame que toutes les nations doivent s'efforcer d'assurer "la reconnaissance et l'application universelles et effectives des droits de l'Homme, tant parmi les populations des États membres eux-mêmes que parmi celles des territoires placés sous leur juridiction."

Ainsi les populations sous domination coloniale, plus particulièrement celles d'Afrique, ont-elles toujours été écartées du bénéfice de protection sans réserve des règles relatives aux droits de l'Homme. Il ne pouvait en être autrement car la colonisation est une philosophie de domination et d'asservissement.

Faut-il enfin souligner que la Déclaration, signée le 1er janvier 1942 à Washington, qui fait suite aux "Quatre libertés" du président Roosevelt et à la Charte de l'Atlantique, concernait essentiellement les peuples en guerre contre le nazisme, et donc très peu l'Afrique ? Elle proclame en effet qu'une victoire complète sur leurs ennemis était essentielle pour "conserver les droits humains et la justice dans leur propre pays et dans les autres nations." Il apparaît donc clairement que les signataires de cette déclaration étaient surtout préoccupés par une issue honorable à la seconde guerre mondiale et par ses conséquences dans leurs pays respectifs, laissant au second plan l'universalisation des droits et libertés de la personne humaine.

La Déclaration universelle des droits de l'Homme de 1948 elle-même n'a pas eu pour effet de faire cesser les pratiques discriminatoires résultant de la colonisation. Par ailleurs, les pays africains n'ont pris qu'une part infime dans l'élaboration de cette Déclaration.[3] Leurs ressortissants, bien longtemps après, ont été maintenus en dehors de son champ d'application. Ni les droits civils et politiques, ni les droits économiques, sociaux et culturels ne leur étaient applicables sans restrictions. Et ces restrictions n'étaient nécessitées ni par le respect des droits d'autrui, ni par la sauvegarde de l'ordre public, de la sécurité ou de la morale.

Examinons brièvement quelques cas :

Le principe de l'égalité

Le principe de l'égalité devant la loi, bien que reconnu par les constitutions des pays colonisateurs, n'était pas applicable aux colonisés. La Constitution française de 1946 par exemple disposait (art. 80) : "Tous les ressortissants des territoires d'outre-mer ont la qualité de citoyen, au même titre que les nationaux français . . ." Toutefois plus loin il était spécifié que : "Des lois particulières établiront les conditions dans lesquelles ils exercent leurs droits de citoyens."

La procédure pénale

Jusqu'en 1946, dans les colonies françaises, une législation pénale particulière était applicable aux indigènes, sans aucune garantie pour leur sécurité et leur sûreté. Les sanctions qui leur étaient infligées étaient parfois humiliantes.

La liberté de circuler
Les restrictions que la réglementation apportait à cette liberté avaient pour but d'assurer une main-d'oeuvre à bon marché aux colons agriculteurs et voilaient le principe du droit d'aller et venir.

La liberté d'expression était méconnue, de même que la liberté d'association.

La participation à la direction des affaires du pays n'était en réalité qu'un leurre.

Le travail forcé
Les réquisitions de la main-d'oeuvre "indigène" étaient souvent justifiées par le fait qu'elles répondaient à "une nécessité pour les premiers travaux de mise en valeur et en raison de l'absence ou de l'insuffisance du nombre des travailleurs se présentant volontairement."

Cela se passait en violation du décret français du 21 août 1930 qui autorisait le travail forcé, en soumettant cette autorisation à deux seules conditions :

- le but poursuivi devait être d'intérêt public ;
- il fallait qu'il y eût impossibilité de recourir à la main-d'oeuvre volontaire.

Naturellement, ces conditions étaient vite invoquées en l'absence d'un système efficace pour contrôler leur réalisation. Mieux encore, le colon qui exploitait les indigènes en recourant au travail forcé n'avait jamais à rendre compte à qui que ce soit, du moment qu'il n'était soumis à aucun contrôle en cette matière.

Le travail libre
Les structures socio-politiques ne permettaient pas le libre choix d'une profession. Le travailleur n'était pas protégé. Dans les territoires français, par exemple, il a fallu attendre 1952 pour voir apparaître un code du travail. Nonobstant l'énorme progrès ainsi réalisé, le principe "à travail égal, salaire égal" n'était pas respecté.

On pourrait ainsi multiplier les exemples et chaque fois montrer que les règles protectrices des droits de l'Homme ne s'appliquaient pas aux colonisés. La conséquence naturelle d'une telle situation a été que les peuples d'Afrique noire et de Madagascar s'étaient toujours considérés comme tout à fait étrangers aux principes et règles régissant les droits de l'Homme. Comme le sont toujours les peuples de la Namibie et de l'Afrique du Sud.

En effet, l'Afrique du Sud, avec son système d'apartheid, maintient plus de 19 millions de Noirs, de Métis et d'Indiens dans une situation incompatible avec l'idée des droits de l'Homme. L'égalité à la naissance n'y est pas reconnue. Ni le droit à la vie, ni le droit à la liberté ne sont considérés comme fondamentaux. Les autres droits sont évidemment bafoués.

De même, en se maintenant en Namibie contre la volonté de la communauté internationale administrante, l'Afrique du Sud s'installe dans l'illégalité la plus flagrante et de surcroît étend l'apartheid à l'ancien Sud-Ouest africain.

Les droits de l'Homme dans le Tiers-Monde libéré

On pouvait légitimement s'attendre à ce que les anciennes colonies, qui ont longtemps été frustrées de la jouissance des libertés publiques, s'érigent, dès leur accession à la souveraineté internationale, en défenseurs acharnés des droits de l'Homme. Certes, dès leur naissance, les États africains et asiatiques pour la plupart ont immédiatement adhéré à l'ONU et accepté sans réserve ses principes et ses normes, notamment les dispositions de la Charte de San Francisco et celle de la Déclaration universelle des droits de l'Homme. Cela va de soi pour les pays du Tiers-Monde, membres fondateurs de l'Organisation universelle.

Ces États ont ensuite élaboré des constitutions et des lois, reprenant les termes de la Déclaration universelle ou se référant à elle. Certaines constitutions ne se sont pas contentées de rappeler ou citer les principes qu'édictent les principaux documents relatifs aux droits de l'Homme. Elles ont énoncé, dans des articles spéciaux, les libertés publiques en en faisant ainsi des dispositions de droit positif susceptibles d'être directement invoquées dans une demande en justice.

C'est en revanche au niveau de la création d'institutions régionales de promotion et de protection des droits de l'Homme que des difficultés se sont posées ou se posent encore. Dès leur accession à l'indépendance, les pays du Tiers-Monde—du moins leurs dirigeants—étaient plus soucieux du développement économique de leurs pays et donc moins portés sur la question des droits et libertés de leurs peuples.

À l'heure actuelle, la régionalisation des droits de l'Homme est manifeste sur tous les continents, à l'exception de l'Asie. Avant d'évoquer la création de ces institutions régionales, il est important de souligner, avant tout, le rôle important joué par les Nations Unies.

1. Le rôle essentiel de l'ONU

L'Organisation des Nations Unies a encouragé la régionalisation, notamment en ce qui concerne la création d'institutions régionales. En effet, la Charte des Nations Unies, qui consacre son chapitre VII aux "accords régionaux," ne s'oppose pas à leur création dans la mesure où ils sont susceptibles de contribuer au règlement pacifique des différends "d'ordre local."

Malgré l'accent mis sur le règlement des conflits, la Charte n'exclut pas pour autant l'action d'organismes régionaux dans d'autres domaines : le paragraphe I de l'article 52 de la Charte, en renvoyant aux buts et principes des Nations Unies (article 1er) parmi lesquels figure la promotion du respect des droits de l'Homme, rend possible une action régionale dans le domaine des droits de l'Homme, sans toutefois la rendre obligatoire.

Il est vrai que pendant longtemps, le régionalisme en matière de droits de l'Homme n'a pas eu un écho favorable aux Nations Unies : on avait souvent tendance à l'y considérer comme l'expression d'un mouvement centrifuge mettant en cause l'universalité des droits de l'Homme. Mais l'incessante remise en chantier des pactes des droits de l'Homme a toutefois amené les Nations Unies à réhabiliter l'approche régionale et à être moins soupçonneuse à l'égard du régionalisme en matière de droits de l'Homme, surtout à partir de 1966, lorsque les Pactes des droits de l'Homme ont été adoptés.

C'est en effet par sa résolution 2200 C(XXI) en date du 19 décembre 1966 que l'Assemblée Générale a demandé à la Commission des droits de l'Homme de l'ONU d'étudier, entre autre, la question de la création des institutions régionales appropriées pour exercer certaines fonctions liées au respect des Pactes. Saisie ainsi de la question, la Commission des droits de l'Homme a décidé, par sa résolution 6 (XXIII) du 16 mars 1967, de constituer un groupe d'étude spécial chargé d'étudier la proposition "visant à créer, dans le cadre des Nations Unies, des commissions régionales des droits de l'Homme." Déposé en 1968, le rapport du groupe d'étude spécial qui ne contient ni conclusions ni recommandations met simplement l'accent sur le fait que l'initiative en la matière appartient exclusivement aux États de la région donnée.

La question de la création des commissions des droits de l'Homme—et par là-même des institutions régionales des droits de l'Homme—a été reprise aux Nations Unies qui a adopté à ce sujet la résolution 31/127. Par cette résolution, l'Assemblée Générale invite les États qui ne l'ont pas encore fait à envisager des accords "en vue de la création de systèmes régionaux appropriés pour la promotion et la protection des droits de l'Homme." Il convient en outre de noter que les commissions régionales existantes dans le Tiers-Monde—américaine et arabe—sont désormais officiellement représentées aux sessions de la Commission des Nations Unies et de tous ses organes subsidiaires.

2. *La création des institutions régionales*

Nous disions plus haut que grâce à l'action des Nations Unies, des institutions régionales ont pu voir le jour dans le Tiers-Monde, à l'exception de la région asiatique.

En Asie, en effet, nombreux sont ceux qui se sont prononcés en faveur de la création d'institutions régionales des droits de l'Homme ou qui ont souligné la nécessité d'une action régionale pour la promotion et la protection des droits de l'Homme sur une base régionale. Mais nombreux sont également ceux qui mettent en doute l'utilité d'un système asiatique des droits de l'Homme et qui récusent le bien-fondé des droits de l'Homme pour les pays asiatiques. Les partisans de la création d'institutions régionales ou d'une action régionale avancent des arguments bien connus, pour souligner l'importance et la portée d'une action régionale pour promouvoir un plus grand respect et une meilleure protection des droits de l'Homme.

En revanche, ceux qui mettent en doute l'utilité d'un système asiatique des droits de l'Homme se fondent essentiellement sur l'affirmation que le problème des droits de l'Homme est avant tout universel et qu'il ne devrait être traité que globalement, ce qui faciliterait un développement rapide d'un système international des droits de l'Homme. De même, ils soutiennent qu'il est inutile de créer de trop nombreux systèmes régionaux car ils donneraient naissance à des procédures et institutions faisant double emploi dans le domaine des droits de l'Homme. Pour l'instant, ces derniers semblent l'emporter.

Toutefois, dans la mesure où les états d'Asie occidentale s'apparentent désormais à un autre groupe, celui des états arabes, les initiatives en vue de la création d'un système asiatique des droits de l'Homme pourraient bien venir d'autres états ou des états d'autres parties de l'Asie.

Parmi les commissions régionales créées dans le Tiers-Monde, celle des états américains est de loin la plus ancienne. En effet, l'Organisation des états américains a créé en 1959 une Commission interaméricaine des droits de l'Homme. Puis, une Convention américaine des droits de l'Homme a été adoptée en 1969, mais elle n'est pas encore entrée en vigueur. Nous ne nous étendrons pas sur cette dernière, dans la mesure où elle a été rédigée selon les mêmes lignes qu'en Europe.

Chronologiquement, la Commission régionale arabe des droits de l'Homme est la seconde institution qui a vu le jour dans le Tiers-Monde. Elle fut créée grâce à la coopération entre la Ligue Arabe et la Commission des droits de l'Homme des Nations Unies qui prend une forme plus intense lorsque le Conseil de la Ligue Arabe adopte la résolution 2259/46 qui crée une "Commission spéciale" chargée de préparer une contribution arabe à l'Année des droits de l'Homme.

Le 12 décembre 1967, le Secrétariat Général de la Ligue Arabe est saisi d'une note de l'ONU lui demandant son avis sur un projet de création de commissions régionales pour les droits de l'Homme. Dans sa réponse, la Ligue Arabe, tout en approuvant le projet, expose sa propre conception dans ce domaine : c'est dans le cadre des organismes permanents de la Ligue Arabe qu'une telle commission régionale devrait être constituée.

Le 3 septembre 1968, le Conseil de la Ligue Arabe adopte la résolution R. 2443/48 portant création d'une Commission régionale arabe permanente pour les droits de l'Homme. Peu de temps après, se réunit du 2 au 10 décembre 1968 à Beyrouth une Conférence régionale pour les droits de l'Homme. Les huit résolutions votées par cette conférence sont destinées à servir de toile de fond aux travaux ultérieurs de la Commission régionale arabe projetée. Elles visent surtout à défendre les droits de l'Homme dans les territoires arabes occupés par Israël.

Cette volonté se retrouve également dans le projet de déclaration dont le Conseil de la Ligue a décidé l'élaboration le 10 septembre 1970.

Bien qu'elle soit encore à l'état de projet, on peut d'ores et déjà affirmer qu'elle reflète l'ensemble des principes énoncés dans la Déclaration universelle des droits de l'Homme, tout en adaptant certains de ces principes aux réalités arabes. Ainsi les droits et libertés inclus dans ce projet sont présentés sous le signe de la continuité entre le passé, le présent et l'avenir, en ce sens qu'ils émanent de la "patrie arabe," berceau des religions monothéistes et des civilisations qui ont de tout temps sauvegardé la dignité de l'Homme et ses droits à la liberté et à la fraternité.

Enfin, on peut espérer que dans la mesure où une imbrication tend à se réaliser entre le monde africain et le monde arabe, le dialogue arabo-africain ayant déjà suscité une coopération étroite dans les domaines économique et social, on peut espérer que cette coopération s'étendra bientôt aux droits de l'Homme.

Précisément dans ce domaine des droits de l'Homme, l'Afrique a franchi un pas important. Longtemps confrontée, de façon aiguë, au problème de la violation des droits de l'Homme, ses chefs d'état et de gouvernement ont décidé de mettre un terme à cette situation, pour le moins avilissante, en adoptant à Nairobi (Kenya), en 1981, le texte devenu la "Charte africaine des droits de l'Homme et des peuples" qui est entrée en vigueur le 21 octobre 1986. En juillet 1987, la Conférence des chefs d'état et de gouvernement a procédé à l'élection, au scrutin secret, des membres de la Commission créée en vertu de l'article 30 de la Charte.

Certains critiques, à la lecture des compétences de la Commission et de la procédure devant elle, ont déclaré que la Commission n'était et ne serait qu'un instrument à la disposition des Princes. Et d'ajouter que la Charte aurait dû prévoir une Cour africaine des droits de l'Homme et des peuples à l'image de la cour européenne, ce qui aurait donné plus de garantie aux particuliers et moins d'emprise aux états.

C'est ignorer que dans la conception africaine il y a répugnance à adopter des solutions judiciaires. Chez l'Africain, les conflits sont tranchés non par une procédure contentieuse mais par la conciliation, qui a lieu généralement par la palabre et aboutit à un consensus. Les procès sont toujours soigneusement évités. Ils sont créateurs d'animosité. Aussi le législateur africain, tant sur le plan national qu'international, évite toujours de faire appel aux tribunaux. On peut prendre pour exemple la Convention du 10 septembre 1969 de l'OUA régissant les aspects propres à l'Afrique du problème des réfugiés, calquée sur la Convention universelle de 1951 et sur son protocole de 1967. Alors que cette dernière convention fait appel à une solution judiciaire pour résoudre les difficultés qui pourraient naître de son application, la convention africaine évite cette solution. Autre exemple plus récent, le refus de la Lybie et du Tchad de soumettre le règlement du conflit qui les oppose à la Cour internationale de justice, préférant ainsi s'en remettre à la sagesse africaine dans le cadre de l'Organisation de l'Unité Africaine.

Pour en revenir à la Charte africaine proprement dite, la première de ses spécificités est qu'elle lie indissociablement droits de l'Homme et droits des peuples. Elle protège l'Homme comme individu et en tant qu'appartenant à un peuple déterminé, et cela conformément aux traditions de la société africaine et aux principes moraux qui sont à la base de ces traditions.

La deuxième spécificité, et non la moindre, c'est l'importance accordée aux droits dits de la troisième génération, importance qui tient compte de l'évolution de la théorie des droits de l'Homme.

En effet, la Charte africaine des droits de l'Homme et des peuples a été adoptée à un moment où l'on peut noter une évolution importante dans la théorie des droits de l'Homme. Cette théorie peut se caractériser par une importance accrue des droits économiques, sociaux et culturels, une plus grande considération donné aux droits dits de la troisième génération.

C'est d'abord la Déclaration de Monrovia (Liberia), du 20 juillet 1979, sur les droits de l'Homme et des peuples en Afrique qui avait souligné

> l'importance que les peuples d'Afrique ont toujours accordé au respect de la dignité de l'homme et de ses droits fondamentaux, ayant à l'esprit que les droits de l'Homme et des peuples ne se réduisent pas aux seuls droits civils et politiques mais s'étendent aux droits économiques, sociaux et culturels et que la distinction entre ces deux catégories de

> droits n'implique aucune hiérarchie mais que, toutefois, il est essentiel d'accorder désormais une attention particulière aux droits économiques, sociaux et culturels.

La Charte africaine estime de son côté que les droits économiques, sociaux et culturels sont indissociables des précédents. Comment peut-on, en effet, apprécier le droit à la liberté quand on ne dispose pas du minimum vital que sont la santé, l'éducation, la culture et le travail ?

En ce qui concerne la considération accordée aux droits de la troisième génération, il est important, pour mieux les cerner, de se souvenir de cette distinction fondamentale élaborée par Karel Vasak.

Vasak a, en effet, soutenu que les droits civils et politiques ont pour base le principe de liberté, alors que les droits économiques, sociaux et culturels se déduisent de la règle de l'égalité. S'agissant de la première catégorie de droits, il est exigé de l'état une abstention; l'état doit en effet se garder d'empêcher l'exercice par les individus des libertés et des droits qui leur sont reconnus.[4] Par contre, pour la jouissance des droits relatifs à la deuxième catégorie, l'état doit fournir une prestation pour leur accomplissement. Schématiquement, on pourrait dire que les droits civils et politiques sont les "droits de" alors que les droits économiques, sociaux et culturels sont des "droits à." Ces droits de la première et de la deuxième génération sont aujourd'hui complétés par ceux de la troisième génération dont la satisfaction ne se contente plus de l'abstention et de la prestation, mais exige la solidarité entre les hommes et les états. Ces droits de la solidarité sont essentiellement définis par la Charte africaine comme étant le droit à la paix, le droit à l'environnement et le droit au développement (mais il y en a d'autres, la Charte n'énumérant que les trois droits que l'OUA reconnaît et sauvegarde).

La référence au droit au développement était déjà contenue dans la Déclaration de Monrovia. En effet, en adoptant cette Déclaration en 1979, les chefs d'état et de gouvernement s'étaient proclamés "conscients du fait qu'un régime politique qui protège les droits fondamentaux de l'homme et les libertés démocratiques est essentiel pour mobiliser les initiatives créatrices de nos peuples, en vue d'un développement économique rapide, y compris les innovations scientifiques et technologiques." Noble préoccupation que l'on retrouve dans la Charte africaine et qui en constitue l'une des spécificités les plus marquantes et les plus louables :la reconnaissance et l'affirmation du droit au développement. En effet, dans le préambule de la Charte africaine, les gouvernements se déclarent "convaincus qu'il est essentiel d'accorder désormais une attention particulière au droit au développement; que les droits civils et politiques sont indissociables des droits économiques, sociaux et culturels tant dans leur conception que dans leur universalité, et que la satisfaction des droits économiques, sociaux et culturels garantit la jouissance des droits civils et politiques."

Cette importance accordée au droit au développement est due, comme nous l'avons dit plus haut, au fait que la Charte africaine a été adoptée au moment où l'on notait une évolution importante dans la théorie des droits de l'Homme et n'est que l'écho de la Déclaration sur le droit au développement adoptée par l'Assemblée Générale des Nations Unies lors de sa 41ème session. Déclaration qui place l'individu au centre du processus du développement, non en tant qu'objet, mais en tant que sujet. Ceci implique donc une adhésion des individus au processus de développement sur une base strictement volontaire. Le droit au développement implique également une solidarité agissante de la part des états qui doivent respecter le droit à la différence, c'est-à-dire le droit de tout peuple de choisir son modèle de développement conformément au principe du droit des peuples à disposer d'eux-mêmes.

L'attachement des gouvernements africains au droit au développement découle aussi, sans aucun doute, du fait que les premiers pas des pays africains furent marqués par des drames qui ont pour nom : coup d'état, guerres fratricides, exécutions sommaires, travail forcé, etc., toutes violations des droits de l'Homme commises dans la plupart des états, sous le prétexte qu'un développement économique rapide exigeait nécessairement des restrictions des libertés individuelles fondamentales. Force est de constater que les résultats n'ont pas suivi, prouvant ainsi qu'un développement économique qui ne prend pas en compte le développement de l'homme pour lequel il se fait, n'est qu'un château de sable sur un plage.

II. L'application des droits de l'Homme dans les pays du Tiers-Monde

Aspects généraux

Les instruments internationaux énoncent toute une série de droits dont le respect est reconnu comme un facteur important de développement.

Comme je l'ai souligné auparavant, la plupart des états du Tiers-Monde reconnaissent en principe les droits fondamentaux de la personne humaine, au niveau constitutionnel ou dans le cadre des conventions et des traités internationaux. Cependant leur application effective s'est heurtée, tout au début des indépendances, à plusieurs obstacles dont les principaux sont d'ordre politique et économique.

En effet, les nouveaux états du Tiers-Monde ont accordé peu d'importance aux droits civils et politiques, leur préoccupation première en cette période post-coloniale étant d'abord d'asseoir leur autorité politique afin de combattre les divisions politiques, les multiples tendances et les conflits ethniques. C'est ainsi que certaines libertés fondamentales telles celles d'aller et de venir, de s'associer, de s'exprimer librement, ont subi des restrictions.

L'absence de solution démocratique aux conflits toujours latents au sein des groupes aspirant à l'exercice du pouvoir a entrainé de nombreux coups d'état et des pratiques dirigistes qui ont le plus souvent abouti soit à l'élimination physique des adversaires soit à la privation de leurs libertés. Si ces pratiques ont cessé dans certains pays, elles persistent encore dans d'autres.

Parfois, les régimes dits progressistes, mais en réalité inféodés aux puissances communistes, ont prétendu nier la propriété individuelle des biens de productions et ont appliqué la conception collectiviste en vigueur dans les pays de l'Est. Il s'en est suivi des politiques d'étatisation de l'appareil productif et des nationalisations, dont certaines au détriment des nationaux eux-mêmes. Une telle conception est contraire au droit à la propriété privée telle que défini par les instruments internationaux. Elle a en tout cas, dans tous ces états sans exception, freiné le développement économique, l'initiative privée seule génératrice de richesses ayant été confisquée au profit de l'État.

Aussi est-il aisé de constater que dans ces pays, le développement économique est retardé par rapport aux pays ayant opté pour un système d'économie libérale où, du fait de la reconnaissance du droit à la propriété individuelle, la croissance des patrimoines des particuliers a contribué à augmenter la richesse nationale.

Un autre obstacle réside dans la misère et le sous-développement que connaissent les pays du Tiers-Monde, situation qui les rend tributaires des pays détenteurs des moyens de production et des capitaux. La crise économique que connait le monde et qui secoue plus durement les fragiles économies des pays du Tiers-Monde illustre bien cette situation de dépendance. Mais l'obstacle majeur réside dans le silence observé par les pays nantis face aux cris d'alarme des pays pauvres et des pays en voie de développement. Ce thème ayant déjà été développé à plusieurs reprises et dans plusieurs forums, il n'est pas nécessaire que je m'y étende.

Toutefois, l'espoir reste permis, car plusieurs solutions connues de nos jours permettent de surmonter ces obstacles.

S'il est vrai que les violations des droits de l'Homme sont encore courantes dans certains états du Tiers-Monde, force est de leur reconnaître le mérite d'avoir impulsé une nouvelle dynamique au sein des Nations Unies, dynamique qui a eu pour résultat l'adoption d'un nouveau droit—le droit au développement—dont les principes fondamentaux ont été réaffirmés par l'Assemblée Générale des Nations Unies dans sa résolution 41/128.

Au nombre des solutions souhaitables, il faut ranger la poursuite résolue du dialogue Nord-Sud, susceptible de créer un climat de confiance entre les pays nantis et les pays en voie de développement. Il s'agit également de favoriser l'instauration d'une véritable démocratie en renforçant les moyens de participation des peuples concernés à la gestion de leurs intérêts et de maintenir un dialogue étendu à l'échelon de toutes les organisations internationales, des organismes régionaux et sous-régionaux.

L'adoption d'une nouvelle philosophie du développement par des pays occidentaux, ainsi que l'instauration du nouvel ordre économique international qui en est le corollaire, peuvent accélérer cette évolution.

A cet effet, nous pouvons déjà nous féliciter du bel exemple de coopération et de solidarité qui s'est traduit par l'adoption de la Troisième convention ACP–CEE signée à Lomé le 8/12/1984, dont la conception repose sur l'idée d'encourager la jouissance des droits de l'Homme, en éliminant les obstacles au développement et en assurant un essor économique aux pays ACP, essor qui tiendrait compte de leurs spécificités sociales et culturelles. Si le dialogue engagé par les pays ACP et la CEE venait à se réaliser complètement, il établirait un équilibre parfait dans les régions concernées et pourrait servir de nouvelle référence pour la coopération Nord-Sud.

Dans le même ordre d'idée, on est en droit de fonder un légitime espoir sur la réunion de concertation qui se tient actuellement à Lomé dont le but est de mettre en place une plate-forme de négociations pour le renouvellement de l'actuelle convention.

Mais il appartient également aux pays en voie de développement d'oeuvrer pour une coopération Sud-Sud plus dynamique et effective. Les pays du Tiers-Monde réunis dans le groupe de 77 devraient, en particulier dans le cadre de leur région ou de leur sous-région, s'organiser pour une meilleure exploitation de leurs ressources naturelles et humaines pour assurer leur développement économique.

En Afrique, comme ailleurs dans le Tiers-Monde, on se réjouit de l'existence de plusieurs organisations régionales et sous-régionales, telles l'OPEP, la CEAC, l'UDEAC, la CDAO, la CEAO, etc. . . Ces organisations oeuvrent pour une meilleure intégration des économies des états membres et, par voie de conséquence, pour le développement intégral de leurs ressortissants. Cependant certaines de ces organisations devraient redynamiser leurs activités afin que les objectifs visés soient atteints.

Il y a lieu d'observer ici que l'évolution des institutions politiques dans le Tiers-Monde est un facteur essentiel pour le respect et la promotion des droits de l'Homme. A cet égard, on note avec satisfaction une nette évolution vers la démocratie soit dans le cadre du pluralisme politique soit à l'intérieur du monopartisme, ce qui contribue à faire reculer certaines dictatures civiles ou militaires dont le maintien est non seulement source de violation des droits de l'Homme mais aussi d'aggravation des difficultés économiques.

Certains pays occidentaux ont même pensé accélérer le mouvement en émettant le voeu de voir s'établir un lien entre l'aide bilatérale au développement et le respect des droits de l'Homme. Cette approche du problème a été rejetée par les pays membres de l'ACP qui ont fait valoir, non sans raison, que la violation des droits de l'Homme n'était pas l'apanage des seuls pays aidés.

L'expérience Gabonaise

Après ce tour d'horizon sur le Tiers-Monde et les droits de l'Homme, permettez-moi, Monsieur le président, Mesdames et Messieurs, de m'arrêter un moment sur l'expérience gabonaise.

Le Gabon, terre de dialogue et de tolérance, est résolument engagé dans le combat mené aux quatre coins du monde pour restaurer l'Homme dans sa dignité première.

La préoccupation de mon pays est grande devant l'ampleur de la violence qui secoue le monde, devant la persistance des génocides et des assassinats politiques, devant les intolérances et les agressions de toute nature, 40 ans après la proclamation de la Déclaration universelle des droits de l'Homme par l'Assemblée Générale des Nations Unies et plusieurs années après la ratification de la Charte internationale des droits de l'Homme par de nombreux états.

Je crois utile de rappeler que le respect des droits de l'Homme est le moteur indispensable de l'épanouissement moral et matériel de l'Homme, de même qu'il est la condition nécessaire à la pleine expression de ses qualités de concepteur et de réalisateur. Ces droits découlent de l'aspiration croissante de l'humanité à une existence permettant à chacun de jouir du respect et de la protection dus à sa personne, c'est-à-dire à son corps comme à son esprit, et ne sauraient donc se réduire à la notion de confort matériel ou à des revendications des individus contre l'État. Ils forment un code de conduite qui s'impose tant aux individus qu'aux États.

Mon pays est conscient que dénier l'usage de ces droits, c'est ouvrir la brèche au désordre politique et social, à l'hostilité entre les nations et entre groupes d'une même nation. En effet, loin d'être un thème abstrait de réflexion pour philosophes et juristes, les droits de l'Homme constituent des données concrètes et fondamentales touchant à la vie quotidienne de tous : hommes, femmes et enfants.

Convaincue de cela, la République Gabonaise a toujours considéré les droits de l'Homme, non comme un élément surajouté à une politique, mais comme le fondement et l'objectif d'une politique :

celle du développement intégral de l'Homme. La référence faite dans le préambule de sa constitution tant à la Déclaration universelle des droits de l'Homme et du citoyen de 1789, qu'à celle des Nations Unies de 1948, de même que les nombreuses dispositions législatives protégeant l'intégrité physique et morale des personnes, la jouissance de leurs biens, le droit au travail, au bien-être, à l'éducation et à la formation, à la santé, pour ne citer que ceux-là, illustrent à suffisance sa volonté de garantir et de sauvegarder les droits de la personne.

C'est également parce que le développement intégral de l'Homme constitue le fondement et l'objectif de sa politique, que le Gabon a pris diverses mesures permettant la mise en application des divers instruments internationaux relatifs aux droits de l'Homme, dont il s'efforce d'inclure les principes dans sa législation nationale.

Nous pensons qu'une société où les lois et les relations humaines se caractérisent par le respect de la dignité de l'homme, et où les conflits sociaux sont résolus sans préjugés, ni discrimination d'aucune sorte, est l'idéal auquel tout État doit s'efforcer de parvenir. Bien entendu, ces objectifs s'entendent sans oublier l'absolue nécessité de développer chez chaque citoyen, le sens de la responsabilité vis-à-vis des droits et des libertés d'autrui.

Ainsi, parmi les différentes mesures prises au niveau national, il faut mentionner :

Au plan économique, social et culturel:

- la loi n° 6/75 du 25 novembre 1975 qui a institué la Caisse nationale de sécurité sociale avec mission de gérer les prestations familiales et sociales pour le travailleur salarié;
- la loi n° 10/82 du 24 novembre 1983 portant création d'un établissement public automne : la Caisse nationale de garantie sociale, placée sous la tutelle de l'État, chargée de gérer les prestations familiales et la garantie des soins pour les contractuels de l'État, étendue aux indigents;
- une couverture sanitaire nationale satisfaisante, dans la mesure où le Gabon compte un médecin pour 3,700 habitants;
- la création d'un fonds d'Aide et de garantie par la loi 1/81 du 8 juin 1981 visant à encourager les initiatives des citoyens qui, dans le cadre de la libre entreprise, ont constitué de petites et moyennes entreprises individuelles ou à vocation coopérative. Cet effort soutenu du gouvernement a pour finalité, non seulement de favoriser le développement économique du Gabon, mais également de contribuer à l'amélioration de la qualité de vie et du bien-être des populations;
- la création d'une agence chargée de promouvoir les oeuvres artistiques et culturelles qui a favorisé la naissance d'une association de défense des intérêts des auteurs et compositeurs gabonais ainsi que celle d'une association de poètes gabonais.

Au plan politique :

Le Gabon peut se prévaloir d'un climat de paix qui se traduit notamment par l'absence totale de prisonniers d'opinion.

En outre, le caractère démocratique du régime gabonais est souligné par la pluralité de candidatures aux élections municipales, départementales et législatives.

Un progrès important de notre action politique s'est traduit par la création en 1987 d'un département ministériel chargé des droits humains, dont le rôle essentiel est d'assurer le respect des droits et libertés des citoyens, tels qu'ils sont garantis par la constitution et les lois en vigueur, et de promouvoir les droits dans un sens dynamique qui tient compte des mutations de notre société tout en veillant à la sauvegarde de nos acquis culturels.

Au total, le Gabon s'efforce de favoriser l'avènement du droit et de sensibiliser ses nationaux. Ces efforts se sont matérialisés dans les années qui viennent de s'écouler par la contribution significative de l'État à la tenue à Libreville de plusieurs forums de juristes et, tout au début de l'année en cours, d'un séminaire sur les services juridiques en milieu rural.

La tenue de ces assises dans notre pays et l'élection récente d'un juriste gabonais à la tête de la Commission africaine des droits de l'Homme et des peuples, sont un hommage qui lui est rendu pour sa contribution à la sauvegarde et à l'affirmation des droits de l'Homme.

Il convient aussi de rappeler ici l'action du gouvernement gabonais qui s'est traduit par l'aide apportée aux populations de certains pays frères de l'Afrique dont l'existence était menacée soit par la sécheresse, soit par d'autres calamités naturelles, soit par la guerre, et les multiples efforts de son président pour ramener la paix dans la sous-région, efforts reconnus par la Communauté internationale qui lui a décerné, en 1986, le Prix de la Paix Dag Hammarskjöld.

S'agissant plus particulièrement de politique en matière de promotion de la femme, il y a lieu de noter que des résultats concrets ont été enregistrés.

Lorsque le Gabon accède à l'indépendance, parents et filles sont conscients de la nécessité de garantir à la jeune fille la même formation que le jeune homme.

La loi de 1966 sur l'enseignement vient renforcer cette conception. Cette loi, en effet, institue l'obligation scolaire de 6 à 16 ans sans distinction de sexe.

De nos jours, grâce à une politique libérale et adaptée de promotion de la femme, nous assistons à l'émergence d'une catégorie de femmes dont l'éducation et la formation se situent à un niveau élevé de compétence, comparable à celui des hommes.

Dans le secteur public et privé, il n'est pas rare que des femmes occupent des fonctions jadis réservées aux hommes. Elles se voient de plus en plus confier des postes de hautes responsabilités.

À titre d'exemple, on peut citer l'entrée massive des femmes dans la magistrature, où les postes de Procureur général de la chambre judiciaire et de Présidente de la chambre des comptes de la cour suprême du Gabon sont occupés par des femmes.

Dans l'armée on note la présence de plusieurs femmes au grade de colonel.

L'architecture, la médecine, l'électronique, l'informatique, la diplomatie, la politique etc. . . attirent de plus en plus de femmes.

À l'orée de l'an 2000, avec les progrès de la science et des techniques, l'apparition de l'informatique, de la robotique et de la bureaucratique, le rôle de production ne sera plus l'apanage des plus forts et des plus résistants, mais la tâche commune de l'homme et de la femme, les deux étant pareillement dotés d'intelligence.

Monsieur le président,

L'expérience gabonaise que je viens de développer succinctement démontre l'intérêt que mon gouvernement attache tant à la sauvegarde des droits et libertés fondamentales du citoyen qu'à la dynamique de la promotion de la femme.

Mais mon pays ne se complaît pas dans une espèce d'auto-satisfaction. Le chemin à parcourir reste long et des efforts soutenus sont encore à accomplir.

Toutefois, le Gabon affirme son engagement pour cette grande cause qu'est la défense des droits de l'Homme et du citoyen, et son gouvernement fera tout ce qui est en son pouvoir pour contribuer à la réalisation de nos objectifs communs.

. . . . . .

En conclusion, le symposium qui nous réunit ce jour prouve à suffisance la volonté marquée de nos États et des organisations non-gouvernementales de parvenir aux dimensions naturelles d'une complémentarité dans la coopération. Ma conviction se trouve confortée par la déclaration de Madame Monique Landry, Ministre des relations extérieures du Canada qui, au sujet de la coopération canado-africaine, affirmait à l'Assemblée Générale des Nations Unies le 27 octobre 1987 que son pays entendait "veiller, encore une fois, à ce que toute l'attention voulue soit accordée aux besoins cruciaux de l'Afrique et, en particulier, à l'urgente nécessité d'un appui concret aux efforts consentis par les pays africains eux-mêmes."

Qu'il me soit permis d'ajouter tout simplement que l'évolution de la situation du Tiers-Monde dépend aussi et surtout de nos pays eux-mêmes, c'est-à-dire des mesures sociales, économiques, politiques, et juridiques que nous prendrons pour assurer le règne du droit.

Notes

1. Quarantième Congrès médical francophone, Dakar, 1975.

2. *Ibid.*

3. Seuls deux pays du continent noir étaient alors membres de la communauté internationale.

4. Voir, par exemple, Karel Vasak, ed., *The International Dimensions of Human Rights*, vol. 1 (Westport, Conn.: Greenwood Press, 1982).

Address:*

The Three Parents of International Anarchy

John P. Humphrey

Résumé

L'auteur, utilisant son expérience à titre de doyen des représentants des Nations Unies, réfléchit tout haut au sujet de certaines faiblesses fondamentales qui caractérisent l'ordre international contemporain, dans le but d'y suggérer quelques améliorations. Il identifie les trois "parents de l'anarchie internationale" comme étant : (1) la fragilité des droits de la personne au niveau international, particulièrement en ce qui a trait à leur observation et à leur mise en application; (2) l'égalité souveraine des états, qui pose problème quant à la procédure de vote aux Nations Unies et qui sape l'efficacité de cette institution; et (3) le principe de responsabilité collective lors de violations du droit international, qui affaiblit le pouvoir d'application des organisations internationales.

L'auteur pense que ces principes fondateurs de l'ordre international, même s'ils sont fermement scellés, sont désormais caducs intellectuellement. Ils représentent un obstacle important à la création d'un monde plus pacifique, un obstacle qui doit être aboli si l'on veut construire un ordre international plus juste.

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* Delivered at the "human rights" symposium, March 29, 1988.

Mr. Principal, Ladies and Gentlemen:

Thank you Mr. Principal. It is quite obvious from your generous words of introduction that you are a good friend. But I am embarrassed because it is not going to be easy to live up to the image that you have painted.

It is true that I have often found myself on the fringes of power. I am not, however, and I never have been a politician. Nor have I ever been in any capacity a member of the Canadian civil service, and that includes the Department of External Affairs. And although I was for twenty years an international official, I have never represented Canada at any international conference—unless I can be said to have acted in that capacity when, on several occasions, I have addressed the United Nations General Assembly when it was celebrating its adoption of the Universal Declaration of Human Rights. But on all of these occasions, I spoke from my own text and from my own heart.

What credentials do I therefore have to be addressing this conference on foreign policy? I am not sure whether I can give you an answer. Shall I say that it is because I am a teacher? Or is it because as the Director of the Division of Human Rights at the United Nations for some twenty years I had a unique opportunity to observe the manipulations of governments in an area with which we are concerned at this conference?

But whatever my credentials may be, my intention is to share with you, Mr. Principal, and with my other friends and colleagues here some of the conclusions that I have reached about the world we live in and its future—if it has any future. You may not agree with these conclusions. You may, after hearing me, even question my sanity. Or you may simply think that this fellow Humphrey is nothing more than a blue-eyed optimist. But I warn you: after hearing me, you may think that I am the worst kind of pessimist. For you may conclude that the things that I am prescribing for the necessary reform of an obsolete international order are impossible of achievement. And you may be right. But, if you are, my reply is then may God help us.

But even if you think that I am leaving the purview of practical politics, what I have to say will perhaps help you better to understand the real nature of the world we live in. And by identifying some of the basic weaknesses of the international order—or should I call it disorder—as we now know it, I will be pointing in the directions that the foreign policy of this and other countries must move if this planet is to remain a place where generations to come can live.

If you want a title for my remarks, Mr. Principal, I could call it "The Three Parents of International Anarchy." All three are, I may say, closely related because all three relate to the status and role of individual men and women in international law.

I first began thinking about these parents of anarchy over 40 years ago, before I went to the United Nations when I was teaching international law in the McGill Law Faculty. I had been reading *The Federalist*, a great book by the way and one that all Canadians should be reading in this period of Meech Lake and national uncertainty. We have much to learn from the early history of the United States, but that is another question.

I was especially impressed by one of Alexander Hamilton's essays in that great book in which he described what he called "the parent of anarchy." He was analyzing the Articles of Confederation which were the basic constitutional law of the United States in the period immediately following the War of Independence. The United States was then a confederation in the sense in which lawyers and political scientists use that term. Our neighbour was, that is to say, little more than an alliance between the separate states of the union, something which, I suggest, if I may digress for a moment, the provinces of Canada are now in danger of becoming.

There was under the Articles of Confederation no legal relationship, no *lien de droit*, between the central government in Philadelphia and individual American men and women. The central government was almost completely dependent on the governments of the separate states. It could not even tax individuals. One result of all this was that the United States was on the point of bankruptcy, perhaps even of civil war. Hamilton called this lack of any legal relationship between the central government and individual Americans "the parent of anarchy"; and he, Madison, Jay, and the other authors of *The Federalist* wanted a strong central government, a real federation and not a confederation, something that the United States became in 1787.

It occurred to me that, although Hamilton may not have realized it, he was writing not only about the Articles of Confederation, but also describing the role of individuals in traditional international law which jurists defined, and some still do define, as a law governing the relations of states and of states only. The individual did not have any juridical personality in traditional international law. He did not, that is to say, possess any rights or owe any duties under that order.

I immediately sat down and wrote an article which I called "The Parent of Anarchy" in which, having in mind the Charter of the United Nations which had just been adopted at San Francisco, I attributed the weakness of the current international order partly to the presence in the system of this same parent of anarchy that Hamilton had described in his article in *The Federalist*.

In the now over 40 years since I wrote that article, there has occurred a radical change not only in the content but in the very nature and structure of international law, which once a purely horizontal order has now become a vertical phenomenon in that it reaches down to individual men and women who now possess certain rights and owe duties under the order. Time will not permit me to describe this revolutionary development. I will only mention the fast developing international law of human rights, including the Universal Declaration of Human Rights—the fortieth anniversary of the adoption of which by the United Nations we are celebrating this year. I should also mention the many international conventions which give rights to individual men and women. The principle that individuals also have duties was recognized at the Nuremberg and Tokyo trials of war criminals.

Although its rapid growth since the Second World War has been nothing less than revolutionary, the international law of human rights is still, like most international law, a primitive system. This is because the mechanisms for its implementation are so weak. The problem is one of enforcement and of implementation. The law protecting the individual is there. What is lacking is adequate measures of implementation. And states, because they give such priority to the protection of what they still call their sovereignty, show little interest in building up these mechanisms. The Canadian delegations to various United Nations organs, including the Commission on Human Rights—and I have just returned from Geneva where I have been attending as an observer in my private capacity the current session of that commission—are more apt to react to situations which affect some immediate national interest than they are to move, as it were, towards the future, and help create mechanisms of implementation which would give more meaning to the international law of human rights. You may, Mr. Principal, interpret that as my first recommendation to the Department of External Affairs. We must, I agree, react to situations that affect our interests. But much more important, if we are to avoid the destruction that threatens all life on this planet, we must help build up an international order based on the rule of law which will maintain peace between nations and protect the basic rights of individual men and women. That is the route that I would like to see Canadian foreign policy take. Am I, Mr. Principal, an optimist or am I a pessimist?

I will have something more to say about implementation in a moment, when I will address the third parent of anarchy which is the concept of collective responsibility for violations of international law. But I want to say something first about what I will call the second parent of international anarchy: the sacred principle, which is enshrined in the United Nations Charter, of the sovereign equality of states. It means, quite simply, that Malta, for example, a country which I visited several months ago and which is about the same size as the Island of Montreal, has the same voting power in the General Assembly of the United Nations and other international organizations and organs as have the Soviet Union or the United States. No wonder that the United Nations cannot do the job which the world wants it to perform. No wonder that many of the resolutions adopted by these bodies lack political reality. No wonder that in our neighbour to the south—once the leader in the attempt to bring order into the international community—there has developed an anti-United Nations sentiment, where indeed there is now a movement against all forms of international multilateralism, a movement that sometimes approaches paranoia.

This sacred principle of the sovereign equality of states is sometimes defended as being an obvious manifestation of democracy: one man one vote, therefore one state one vote. But that is nonsense. It means, in effect, that a citizen of, say, Malta has I do not know how many more times the influence at the international level than a citizen of, say, the Soviet Union. I do not know what there is that is democratic about that.

This problem will not be easy to solve. The principle is for one thing enshrined in the United Nations Charter which can only be amended by a two-thirds majority of the members of the organization which is now largely controlled by the smaller states. Vested interests have been created which it will not be easy to satisfy. There is, moreover, the difficult question of what criteria should apply. Should it be the principle of representation by population? A world organization based on that principle would include many Chinese but very few Canadians. Or should the criterion be military or financial power? I leave you with the question. It is probably the toughest problem that statesmen of the future will have to solve. It is a problem, however, for which a solution must be found; and I would be happy if I thought that the Canadian government were directing some attention to it. It is true that after the last war Canada did propose a functional approach: a state's right to representation on an international body, for example the Security Council, should reflect its contribution to the solution of the problems with which that body is concerned; but the Canadian position did not address the question of voting power which is the life-blood of what I am calling the second parent of anarchy.

The third parent of international anarchy is the concept and very topical practice of collective responsibility for violations of international law. Notwithstanding the principles recognized at the Nuremberg and Tokyo trials of war criminals, most of the sanctions of international law are aimed at collectivities, that is to say, at indiscriminate masses which include many innocent men, women, and children. When, for example, the government of a certain country is suspected of engaging in acts of terrorism against another country, that latter country may be tempted to bomb the coast of the suspected offender, a unilateral use of force which, I do not need to say, would be a flagrant violation of the United Nations Charter. Put yourself, Mr. Principal, in the shoes of a victim of that kind of a sanction. Even the system of international sanctions legitimatized by the United Nations, including, for example, sanctions against South Africa, although the latter do not yet include military sanctions, are aimed not necessarily at guilty individuals, but against communities at large, including people who may be opposed to the very acts that give rise to the sanctions including in this case people who oppose *apartheid*. You will agree that there is something wrong here. But it is not only a question of innocent people suffering. The guilty usually escape. They hide behind that same principle of collective responsibility.

This principle of collective responsibility is under attack. I have already referred to the trials of war criminals after the Second World War. And in the genocide convention and the recently adopted convention on the abolition of torture, the concept of individual responsibility is recognized. But these are still pretty much exceptions which provide little more than material for scholarly discussion. The third parent of anarchy still presides over the contemporary international system. I have already said that this order is obsolete.

I have spoken, Mr. Principle, of three parents of international anarchy. There are also others, but these three constitute major barriers to the creation of a peaceful world. They are also among the most powerfully entrenched. If the contemporary state system is obsolete and must be changed, a good beginning would be to expel all three. To attempt to do this is a direction that I would like to see Canadian foreign policy take.

Address:*

The Human Rights Situation in the Philippines and the Challenges for Canadian Aid Policy

A. Caesar Espiritu

Résumé

Depuis peu, la ferveur de l'admiration et de l'estime internationales qu'on a accordées à la façon unique et sensationnelle par laquelle le régime autoritaire des Philippines a été renversé, a quelque peu tiédi. En faisant des mesures anti-insurrection l'axe central de la politique gouvernementale, l'administration Aquino semble se conformer à la politique du régime Marcos, par l'accent qui est mis sur la répression et la ligne dure qu'elle adopte quant aux réformes sociales.

Il est vrai que c'est la responsabilité des peuples de chaque pays que de promouvoir et de défendre eux-mêmes leurs droits. Mais il est aussi vrai que les peuples des sociétés industrialisées, où les droits de la personne sont considérés acquis parce que leur reconnaissance est un fait de la vie quotidienne, ont aussi un rôle auxiliaire à jouer dans la promotion des droits de la personne au niveau international.

La politique extérieure du Canada a de toute évidence fait la preuve qu'elle entérine ce principe. Le Canada a adopté de nouvelles initiatives au niveau international dans la défense des droits de la personne, les portant au rang de plate-forme dans sa politique d'aide au développement extérieur. Cependant, certains se demandent si la rhétorique des droits de la personne ne sera pas mise de côté lorsque

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d'autres intérêts seront en danger, comme par exemple les intérêts commerciaux et les alliances politiques du Canada; ou si elle ne sera pas appliquée de manière inconséquente, à la remorque des autres impératifs de politique extérieure.

Les politiques futures du Canada vis-à-vis des Philippines devraient être basées sur une analyse minutieuse des structures sociales et des institutions qui perpétuent une oppression et une pauvreté systémique. Des clichés tels la libéralisation et l'économie de marché ne fonctionneront pas dans un cadre féodal ou autoritaire. L'aide au développement et la planification économique devraient viser à alléger la pauvreté et réduire les inégalités économiques. L'aide du Canada devrait être davantage dirigée par le biais des ONG internationaux et philippins. Enfin, le Canada devrait utiliser les forums offerts par les Nations Unies afin d'améliorer les droits de la personne dans les pays qui, comme les Philippines, ont ratifié les deux Pactes internationaux relatifs aux droits de la personne ainsi que le Protocole du Pacte international sur les droits civils et politiques.

I.

First, let me address myself to the present situation of human rights in the Philippines, as compared with what prevailed during the Marcos regime.

From a broad perspective, the fundamental difference lies in the very nature of the two regimes: the Aquino government was democratically elected and has restored democratic institutions; the Marcos regime was a dictatorial regime that did away with all our democratic institutions and centralized all powers in the presidency.

The 1986 constitution proclaims the values and virtues of legal liberalism: republicanism, checks and balances, a bill of rights, judicial independence, and, over-all, the rule of law, insisting on the accountability of power. The 1973 Marcos constitution, as amended, was the framework for absolutism.

Of late, however, the fervor of admiration and appreciation for the unique and sensational way the authoritarian regime was overthrown in the Philippines has waned somewhat. The world press has been invariably reporting the increasing concern, most acutely on the part of some of the early supporters of the present administration, over what they claim is a growing convergence of the political tendencies in the policies of the Marcos regime and the Aquino administration. These groups point to government policies to meet the insurgency problem, with the concomitant violations of human rights, as well as present policies on social reform.

These concerns cannot be lightly dismissed. At the the same time, this is an over-simplification of a complex problem—a problem which had grown to vexing proportions during 14 years of authoritarianism and repression. The disenchantment of some early supporters of the new government springs from an inability to understand that the wounds of 14 years of savagery cannot be healed in a year or two—not even by a superman or superwoman.

To understand the complex strains in Philippine political life, let me take you briefly back to the history of constitutionalism in the Philippines.

Commitment to human rights was, at least in theory, a cardinal faith of the Filipino people for several decades. A constitutional democracy with a tender regard for human rights had been the formal political ideal in the Philippines over a long period of time. That the lack of broadly-based participation in the political process had, in reality, confined the enjoyment of citizens' rights to a narrow segment of the national community up to 1972, did not change the basic fact that, formally, the civil liberties of the people were guaranteed by the organic and fundamental laws of the land from the turn of the century up to the institution of martial law.

Then martial law came like a thief in the night. Suddenly the people woke up on September 23, 1972, to find out that the democratic structures of the existing order had been demolished.

Martial law was declared ostensibly to "save the republic" and to "reform society." Bringing with it a sweeping diminution, if not denial of respect for human rights, it declared that a "state of rebellion" existed in the Philippines, and that such a rebellion had "assumed the magnitude of an actual state of war against the Filipino people and the Republic of the Philippines."

In quick succession, through several referenda, amendments were introduced, calculated to give the president complete control of government. The infamous Amendment 6 empowered the president to issue decrees with the force of law when the national assembly (which was then a rubber stamp of the executive) failed to act adequately on any urgent matter for any reason that in his judgment required immediate action.

Shades of the Nazi regime's constitutional putsch in 1933! (The Law for Removing the Distress of People and Reich, *Gesetz zur Behebung der Not von Volk und Reich*, of March 23, 1933, freed the Reich Chancellor from any restraint by parliament and handed overall powers in Germany to the Reich cabinet for four years, with the laws enacted by the cabinet to be drafted by the chancellor who "might deviate from the Constitution.")

The worst violation of the constitutional provisions against deprivation of liberty without due process was found in Presidential

Decree 1836, allegedly issued on January 16, 1981, one day before the "lifting" of martial law. It provided that "the President may issue orders of arrest or commitment orders as to any person whose arrest or detention is, in the judgement of the President, required by public safety and as a means to quell an invasion, insurrection or rebellion or imminent danger thereof" (section 1). It further provided that "The person so arrested or detained shall not be released until so ordered by the President or his duly authorized representative" (section 2). No bail was allowed, and the detention was for an indefinite period.

In all of this, of course, the military was a critical part of the political order, with a growing profile as an instrument of the martial law regime—influencing the limits of policy making and implementation and assuming both concrete and symbolic importance in the human rights-development linkage, particularly in relation to the power to arrest, search, and seize persons, including those branded as "economic saboteurs."

The first independent look at what had happened to the so-called "American showcase of democracy" was taken in September 1978 by Amnesty International (which was to receive the Nobel Peace Prize a few months later). Amnesty's report focused on the treatment of political prisoners, of which there were still at least 6,000 in the Philippines four years after martial law had been declared. "Torture was widespread," Amnesty concluded.

But let us go back to certain fundamentals. North American commentators (notably the U.S. State Department during the Carter administration) have generally identified three categories of human rights:

1. those having to do with the integrity of the human person, that is to say, personal security—which are violated by extra-judicial killings, arbitrary arrest, illegal detention, etc.
2. those having to do with the traditional liberties of the individual—freedom of speech, of assembly, and of religion, and the procedural standards of due process
3. those having to do with economic and social rights.

For many countries of the Third World, the obvious linkage between development and human rights lies in the visible downgrading of the first two categories of human rights—which correspond roughly to what members of the human rights community call civil and political rights—in order to achieve economic growth. This is the logical offshoot of the idea, so popular among authoritarian rulers, that developing countries cannot afford the luxury of promoting both civil and political rights on the one hand, and economic rights on the other. The argument is that since the most important of all the rights of their people is economic security—which, to them, can be achieved only by pursuing a "growth first" strategy—then a diminution of civil and political rights becomes justified. A "trade-off" of rights becomes imperative.

For the political and economic elites in many of these countries, if hydro-electric dams are necessary for economic development, then they would have to be constructed even if this should mean tribal genocide for indigenous minorities. If export trade zones have to be created, it should not matter if women are mercilessly exploited with their wages kept at near-starvation levels. If foreign investments have to be attracted, it should not matter if strikes are banned and unions busted. If modern commercial agriculture has to be established in the name of export-led growth, the use of violence by state agencies to terrorize farmers into giving up their small landholdings should be countenanced.

In other words, a "trade-off" between development and rights, to many of the western-educated elites of the developing world, is both necessary and useful. "Growth first" becomes the national ideology.

But the fact is that no persuasive evidence has been advanced to demonstrate that the first two categories of human rights need to be derogated or sacrificed to meet essential human needs. The concept that economic growth is the indispensable prerequisite to political and civil rights has not been borne out in practice. To the contrary, Rhoda Howard, the Canadian sociologist, asserts correctly that no economic right is safe so long as the state has the power to incarcerate, torture, or murder a person claiming it; nor is any economic right safe as long as there are no means, through the press, association, or politics, to assert it. And J. O'Brien foresaw that governments that ruthlessly suppress rights, even on the pretext of achieving some economic purpose, are seldom predisposed at a later date to restore these same rights.

Workers did not only have to contend with labour-specific repressive laws and administrative acts under martial law in the Philippines. They were also exposed to the general repression of the martial law regime. The military, for example, was extensively used to break strikes. "Preventive detention" of labour leaders became a common occurrence, especially prior to planned mass actions and demonstrations.

The absence of genuine, representative unions permitted labour conditions to be more oppressive in the labour-intensive export sector than in many "home-market" industries. Testimony prepared by Filipino labour organizers for the Permanent Tribunal on the Rights of Peoples in Antwerp, Belgium, in October 1980, provides a glimpse of these conditions:

> In labour-intensive companies, the conditions are worse. Most garment workers are women. They complain of

> heat exhaustion. Fainting and dizziness are common among workers in Triumph International, a foreign-owned firm making brassieres. At Gelmart, a dress and glove firm owned by an American, a woman worker testified: "The factory is very hot. Because of the sudden change in temperature when we go out, our bodies are prone to sickness." It was also in this factory that fire broke out and killed 11 workers with 53 others injured . . . .
>
> The women workers in the electronics industry tend to suffer from eye defects after three years of employment. Others complain of acid burns, skin rashes from epoxy resins and other allergy reactions due to solvents like trichloroethylene . . . .

These conditions obtained as a direct result of the World Bank/IMF policies imposed on the Philippine government, of export-led industrialization through the establishment of free trade zones.

But if there have been violations of human rights of workers in the Bataan Export Processing Zone, had there not been gains to the country? Had the free zone not boosted trade and promoted the industrialization of the Philippines?

According to a 1982 study of processing zones in developing countries by the United Nations Conference on Trade and Development (UNCTAD), the contribution of free trade zones all over Asia to the economic development of the host economies had been disappointing, at least if their economic impact was measured against the rather ambitious objectives pursued by most developing countries. (Indeed, even in an industrialized country like the United States, foreign trade zones have recently been criticized as having encouraged imports instead of promoting balanced trade and having eliminated more American jobs than they created.)

In the case of the Philippine Bataan Export Processing Zone, from 1973 to 1982, foreign exchange earnings amounted to a meagre $82 million which could not even offset the $192 million spent by the government in building the zone. And even more worrisome was the fact that most of the money was raised domestically. Of the $86 million equity, 76 per cent was domestic and 24 per cent foreign money. Of the borrowings, 92 per cent were loans from Philippine banks and 8 per cent from foreign banks.

There was not only loss of freedom for the mostly women workers there. There was a loss of bread as well. The alliance among the World Bank/IMF combine, our authoritarian ruler, and transnational corporations was vividly portrayed in a book called *Development Debacle: The World Bank in the Philippines*, by Filipino and American authors, which was published in 1982.

But the Filipino people could endure only so much repression; the bloodless revolution came in February 1986 after 13½ years of martial law.

A few days after the proclamation of the new president and vice-president, the Aquino government restored the privilege of the writ of *habeas corpus*, which resulted in the cancellation of most of the cruel commitment orders and preventive detention action used so extensively by the fallen repressive regime.

One day later, President Aquino approved the ratification of the International Covenant on Civil and Political Rights, and of the Optional Protocol to the Covenant, which permits individuals to appeal to the UN Human Rights Committee in case of violation by the government of any rights enshrined in the covenant. This was followed by a general amnesty for all political prisoners—more than 500 of them—in fulfilment of a promise by President Aquino during the election campaign to work for reconciliation and national unity.

With the new government has come a new constitution. The 1987 constitution provides a number of distinctive features in the Bill of Rights and the Declaration of Principles and Policies. These documents articulate the vision of a just society and a just state, as conceived by the Filipino people for the close of the twentieth century.

Yesterday, Professor John Humphrey spoke about the significance and importance of *The Federalist* papers. Indeed, it would be useful to read Hamilton, Jay, and Madison to understand the framework of the American republic in the 1770s. But Jefferson, at that time, and Harold J. Laski, in recent times, also emphasized that a bill of rights could only be as strong as the people's determination to support it, no more no less. The best guarantees of a bill of rights will not adequately protect the people if there is no popular will to freedom. This, to our sorrow, we have learned in the Philippines, and the witch-hunt during the McCarthy period in the United States in the 1950s demonstrates further the validity of this observation.

It takes more than good intentions or an anti-Marcos ideology, however, to bring under control a country wrecked by crises. The economy of the country, already weakened by erratic policies and a repressive regime made singularly notorious by its spectacular corruption over a period of 14 years, has just started to take a discernible upturn.

Some critics of the Philippine political scene think that one prospective destabilizing factor on the road back to democratic processes in the Philippines is the military. It is true that the rapid expansion of the military since 1972 had enabled it to acquire political power. The disbandment of congress during the state of emergency, the suspension of the electoral processes, the arrest and detention of leading traditional politicians, and the proscription of political parties and their activities, facilitated the military's rise to power.

The end of the constitutional dictatorship of Marcos, unfortunately, did not diminish the high visibility of the military. In a sense, it has increased further in the new regime. For it was the military (or one faction of it) which had acted as the catalyst of the post-election crisis by staging the rebellion that sparked the street revolution. For having performed that admirable role, the rejuvenated armed forces has, for weal or for woe, assured itself, at least for now, of a more influential position in public affairs.

Withal, some problems have been compounded of late.

The claim of critics is that by making anti-insurgency the centrepiece of government policy, the administration seems to be hewing close to the policy of the Marcos regime in emphasizing repression and the tough line over so-called reform. Because the military line under the Marcos regime was, and is now, that the enemy is the insurgency, and that no effort should be spared in supporting other armed groups in the counter-insurgency program, the implicit official attitude has appeared to be that human rights should take a back seat.

Three missions of Amnesty International have come to the Philippines since Marcos left in February 1986. The first two missions, in 1986, came away impressed. "The Aquino government's commitment to human rights and legal safeguards had led to major improvements," the second 1986 report said, noting the repeal of Marcos-era decrees allowing indefinite detention, the reinstatement of the writ of *habeas corpus*, and the release of more than 500 political prisoners. However, in its mission of July 1987, the first major survey since Marcos—*The Philippines: Unlawful Killings by Military and Para-Military Forces*—Amnesty applauds the Philippine government's good start on human rights issues but warns that a "rising cycle of killings and reprisals during 1987 now mars these early gains."

Expectations for this government, born of a glorious and bloodless revolution, were high on both the national and international levels. The country adopted a constitution which is considered amongst the most progressive in the world with regard to guarantees on human rights. Yet some international human rights groups of good reputation, such as the Asian Commission on Human Rights (which sent a mission in January 1988), see no evidence of that commitment being put into effect.

Has there been a rightward lurch by government? On first blush, it might seem so. But over time, and in the long run, this should not be the case. For one thing, the revolution itself was aimed precisely at dismantling a rightist regime. For another thing, there is no comparison between the present free exercise of the traditional civil liberties of the people and the repressions of the previous regime. Full freedom of speech and of the press, freedom of movement, freedom to dissent, to criticize, to demonstrate, to form opposing political parties; these have all been restored. What possibly tarnishes the image of the government are perceptions that the extreme left and the extreme right—and particularly the paramilitary forces of the government—have continuously been violating the personal security of individuals. For good or for ill, the government is the omniscient, omnipresent teacher. Its standards should not sink to the low standards of people living outside the pale of law.

But let us not forget that the president herself is clearly not military-oriented, if only because her husband was for many years in solitary confinement in military barracks. Above all, it is widely believed that it was the military that assassinated her husband, Ninoy Aquino. And it is the assassination, as everyone knows, which sealed the fate of the Marcos regime.

There is another important ingredient of Philippine culture which should not be missed. The military in the Philippines had, since the American colonial government was installed at the turn of the century, consciously and psychologically considered itself inferior to civilian authority. The great military tradition that exists in many countries of Latin America, and that was the embodiment of prestige and *esprit de corps* among the general staffs of Germany and Austria up to the two world wars, had been unknown in the Philippines. It was only during martial law, some ten years after tremendous powers had been conferred upon it by the dictator, that it sank into the military's psyche that it could, indeed, exercise such powers.

But now with the government having survived several coup attempts and with important democratic institutions restored—a democratic constitution, elected legislator, and, soon, elected local officials—may not the traditional professionalism of the Philippine armed forces be resuscitated? Already, with the newly convened house of representatives jealously asserting its near-absolute power over appropriations, including that over the military budget, and with every appointment from the rank of colonel upwards being subjected to searching scrutiny by the Commission on Appointments (as mandated by the constitution), the taming of the military may very well be under way.

Indeed, the present legislature, which is a department co-equal with the executive in our presidential system of government, has been consciously flexing its muscles. When trial balloons were released by the military establishment in February 1988 for the enactment of emergency powers for the chief executive or for a limited state of emergency such as obtains in Malaysia, the Philippine House of Representatives swiftly brushed it aside.

A second but no less fundamental issue in the Philippines today has to do with social reform. Social reform is an intractable problem. Domination and dependence has been the hallmark of our social order for centuries. Small wonder that the American translation of *Noli Me Tangere*, the Latin title of the powerful novel of our national hero, José Rizal, written towards the end of the nineteenth century, was *The Social Cancer*.

The litmus test of our struggle for social reform is in the land reform bills now under discussion by the conference committees of the senate and the house of representatives.

Land reform is without doubt indispensable to the stability of Philippine society as well as to the economic security of the rural poor, particularly the landless rural poor. An authentic land reform, if it should come, would be one of the instruments of the people's liberation from poverty and dependence. Progressive land reform will lend encouragement to the people who have been the victims of systemic oppression. Indeed, land reform is not only an economic measure; equally important, it is a social measure. And it is axiomatic that for democracy to flourish in any polity, a certain degree of social and economic equality should prevail.

Land has been very much an issue in the Philippines for more than 200 years. In the novels of Rizal, the major issue against the Spanish rulers was land, which was then owned mostly by Spanish friars. When the Americans came to the Philippines, they discovered that land was an important issue. But it is a well-known fact in the history of colonization that colonial powers align themselves with the elites of the native population in order to assure stability. Thus it was that from the turn of the century until the Second World War, despite ostensible government efforts, there could be no real, honest-to-goodness land reform in the Philippines. And even after independence in 1946 up to 1972, all land reform measures again came to grief. Finally, when with great pomp and ceremony (and hypocrisy), Marcos, upon proclaiming martial law, decreed that its fundamental base was land reform and that he was going to be the great emancipator (with apologies to Abraham Lincoln) who was to liberate the peasants from the bondage of the soil, the outcome was failure.

The social problems of the Philippines are complex and profound. Raymond Bonner (of *The New York Times*), in his book entitled *Waltzing with the Dictator*, has written:

> Marcos had promised a redistribution of wealth. On that he delivered—but he redistributed the wealth from the poor to the rich. Overall, by the mid-1970s, seven out of every ten Filipinos were worse off economically as the result of martial law.... Philippine soil is rich, there is

> plenty of rain and sunshine, and the people are hardworking. Yet, under martial law, while the palace royalty and their guests stuffed themselves on caviar, the Filipino people had become the poorest-fed in all Asia.

Indeed, despite almost a century of democratic institutions, the Philippines remains a feudal society, with the top one-fifth of the population receiving half the country's income. As John Andrews of *The Economist* describes it, Spain, over three centuries of colonization, created the Philippine elite; the United States, in an occupation lasting from 1898 to 1946 (with an unkind Japanese interruption from 1941 to 1945), preserved it. He writes:

> The Americans, with a patronizing concern for their little brown brothers, has vowed to help turn the Philippines into a showcase of democracy. The concept has a soothing logic. Why not enlist the favoured few in the evolution of a system that will help the less fortunate? But there is a flaw beneath this veneer. Democracy is based on the will of the majority; by definition, the elite is a minority. And the Philippine elite, like any other, is hardly likely to surrender its privileges voluntarily.

The Philippine struggle against insurgency is inextricably intertwined with the feudal structure of society. For communism in the Philippines is not only an ideological problem; it is a social problem as well, with complex roots. The huge and growing gap in access to goods and services between the rich and the poor has unceasingly plagued the Philippine social scene.

Thus today, while human rights activists have placed emphasis on the equal standing of social, economic, and cultural rights *vis-à-vis* civil and political rights, democratic developmentalists have progressively integrated all human rights into the concept of development.

II.

Let us now go to the Canadian scene. I cannot, of course, speak with authority about this. I can only give the impressions of a foreigner who lived briefly in Canada and developed a special fondness for this country.

Bertram Ramcharan asserts that the principal burden for development lies in each country, which should determine its own path. Nevertheless, international cooperation, as expressed in the United Nations Charter and other UN documents, is also necessary for the development of poorer countries. There is a growing acceptance of the premise that affluent states now have a moral obligation—and, arguably, as a norm or principle in international law, it is an affirmative obligation—to assist developing countries. In the more specific realm of international human rights, and particularly as regards civil and political rights, it is the people of each country who bear the primary responsibility to promote and protect their own rights. Indeed, altering structures of power, of economic benefits and institutions are properly part of the urgent internal agendas in many developing societies. But surely the people of industrialized societies, whose human rights are taken for granted because they are upheld as a fact of everyday life, do have a subsidiary role in promoting international human rights; the fact that under the International Covenant on Civil and Political Rights another state, or even a group or an individual, can lodge complaints against a state violator of human rights, proves this.

Canadian foreign policy has obviously demonstrated that it accepts this principle in theory; hopefully, it will also be accepted in practice. And I am happy to note that Canada has taken new initiatives in international human rights, upgrading them as an important plank in Canadian foreign development assistance policy—although some wonder whether the rhetoric on human rights may not be easily set aside when other interests are perceived to be at stake, such as Canada's political alliances and trade interests, or may not be inconsistently applied in the wake of other foreign policy imperatives. Still, your new official foreign aid strategy (*Sharing Our Future*) has unequivocably taken the position that in countries where violations of human rights are systematic, gross, and continuous, and where it cannot be ensured that Canadian assistance reaches the people for whom it is intended, government-to-government (bilateral) aid will be reduced or denied and assistance will be channeled through development partners working at the grassroots level, such as non-governmental and multilateral organizations.

But there is also some concern that the new Canadian initiatives deal almost exclusively with the economic rights of aid recipients; an emphatic relationship of civil and political rights violations to aid decisions seems to be wanting.

This possible shortcoming, if it be such, can hopefully be offset by the broader mandate of the new International Centre for Human Rights and Democratic Development that is being set up. It can be regarded as a move away from a 1970s development-aid policy that gave little or no importance to civil and political rights violations, except perhaps where those violations directly retarded development.

In any case, rhetoric has to be matched by action. Just to illustrate the point that despite lip-service to human rights, opposite results can follow, let me mention the aid that the Philippines received from a powerful ally during the Marcos regime. In his book, Raymond Bonner recalls that when U.S. President Carter came to power, he immediately asserted that human rights would be the "soul of our foreign policy." Immediately, two laws were enacted prohibiting aid to any country which engaged in a consistent pattern of gross violations of internationally recognized human rights, i.e., torture of political prisoners, cruel or inhuman treatment by policemen, prolonged detention without charges, and all other denials of the right to life, liberty and the security of person. Again, at a university commencement 11 years ago, President Carter reaffirmed his country's commitment "to make human rights a fundamental tenet of foreign policy." Yet in the same month the U.S. government supported $88 million in World Bank loans to the Philippines "without a peep about human rights."

The State Department had decided to vote in favour of the loan—including $15 million for rural development. But at the same time, it let our authoritarian ruler know that it intended to take human rights matters into account, thereby implying that in the future its vote might be no. Mr. Bonner narrates that the U.S. representative to the World Bank was to make the same statement when the $15 million loan was voted on. But when the vote came, the superpower was silent. The State Department's total failure to follow through on human rights and bank loans "has left us in limbo dangling a dud, with credibility damaged, and far from the intended signal conveyed," the U.S. charge d'affaires in our country lamented.

A year later, the most farcical elections of the century were staged in the Philippines. There was a convulsive outcry among our outraged people. But U.S. officials did not speak out for democracy. They had an opportunity to do so, but they let it pass.

Our ally did more than just fail to condemn. Three separate aid packages for the Philippines were approved, including $17 million worth of bullets, 51 armoured vehicles, and patrol boats. And two U.S. vice-presidents, in succession, were sent to the Philippines to toast Philippine adherence to democratic processes!

I have recited these facts, not so much to chide or complain, but, in the spirit of Polybius and Thucydides, to present history so that we may derive lessons from it. If our Canadian friends really mean what they say about making human rights an important element of Canadian foreign policy, then certain things have to be done.

What Can Canadians Do?

1. There is, first of all, a need to understand the social structures and institutions in the Philippines that breed systemic oppression and poverty. There is also need to understand why despite half a century of

liberal political rule, the American colonial government was unable to change the pattern of domination and dependence in the country.

Understanding this, Canadians will also understand why such cliches as liberalization, the market economy, free trade—which have so powerfully captured Western political and economic thinking—cannot and will not work in a setting of feudalism, authoritarianism, domination, and subservience. For what people will want the commanding heights of their economy dominated by foreigners? Or their international trade subjected to the vicissitudes of price and supply fluctuations in a world economy dominated by industrialized countries? Knowing this, you will understand why national and international policies are inextricably intertwined. Why free trade between a rich country and a poor one—unlike between a United States and a Canada—instead of enriching rich and poor countries alike, would result in increased prosperity for the industrialized country and, by what Myrdal calls a process of cumulative causation, stagnation and poverty for the poor. Why the "trickle down" theory fostered as the ideology behind foreign aid in the 1950s and the 1960s did not succeed. You will understand why development is not and should not be concerned with macroeconomic statistics of GNP alone, but with development of the potentialities of peoples and societies—the main goal being not so much to increase export earnings as to make human life more humane under the stresses and opportunities of economic growth. Why it is futile to see how economic growth can make a dent on the poverty of a people who do not participate in the political processes except to vote. You will understand why, contrary to what we were taught at Harvard or at Manchester, economic growth as such is not what is ultimately important in many developing countries, but rather economic growth that alleviates the worst aspects of poverty in the present and that bears the seeds of diminishing inequality in the future. Why development will ultimately not be relevant unless it touches the lives of those whom, in moving poetry, Rabindranath Tagore has identified as the poorest, the loneliest, and the lost.

Take the struggle over land reform in the Philippines. Reform itself connotes an imperative for establishing justice after centuries of oppression. But the opponents of land reform would like to make it a sale of real property.

As it had actually worked in Philippine social life, the concept of property implied not only the idea of things existing for the sake of persons—that is to say, human control over things. The essence of property has been in the relations among men arising out of their relation to things. A property right is a relation not between an owner and things only, but between the owner and other individuals in reference to things. Because of this, property is power. Indeed, as some political theorists have put it, dominion over property has operated as *imperium* over fellow human beings.

But to those Canadians who feel the need to redress the grievances of the victims of injustice by effecting radical structures in a feudal economy, I can only give the reminder that in your new development aid strategy, *Sharing Our Future*, Canada is emphatically committed to ensuring that Canadian development assistance programs strengthen the cause of human dignity.

Should not land reform in the Philippines be one test of Canada's commitment to social justice? Such that financial support may be given for a genuine land reform bill, while a farcical one can be met with disapproval by your government? Your aid strategy, in fact, implies using all diplomatic channels, including ministerial discussions, bilateral meetings, and international consultations, to press governments that violate human rights to improve their record. This goes further than the refined and subtle use of quiet diplomacy that Dan Livermore has suggested.

Let us not forget that Nobel Prize-winning economist Vassily Leontief has pointed out that to achieve accelerated development, far-reaching internal changes in social, political, and economic institutions are necessary, coupled with significant changes in the world economic order.

Understanding this, the need to be somewhat systematic in the appraisal of an aid-receiving country's performance in human rights follows. How does one assess how far a country respects human rights? The adoption of a list of key rights, or a classification grid for recipient countries that could provide incentives for good behaviour as well as penalties for poor human rights performance, was recommended by the Winegard Committee. But it was rejected by the Canadian government on the grounds that such assessments would be too subjective, and that there are no "fixed and coherent rules for them." Naturally, as critics like Rhoda Howard concede, it would be unwise to use Canadian reports on key aid recipients in a mechanistic manner as a hard and fast indication of mandatory aid "cut-off" points. Nevertheless, some purpose may be served by adopting what the Human Rights Research and Education Centre of the University of Ottawa advocates, namely, the inauguration of a more formal policy link between official development assistance and human rights performance that would require additional sophistication in cyclical reviews of country programs, such as a regularized format for assessing human rights conditions, as well as a periodically annotated collection of relevant policy statements.

Of course certain details would have to be worked out, which may mean that struggle for human rights in Canadian development assistance would move from the streets into the offices of the bureaucracy, as vividly expressed by Robert Miller.

2. Canadians have been doing a lot lately. Professor Irving Brecher has said that the last three years have witnessed an unprecedented outpouring of discussion and debate on foreign policy. And human rights issues have become a major part of the development debate, with the Canadian public, particularly the human rights community, playing an important role.

You can continue these efforts. Our hope is that there are, indeed, many individuals and groups in this country who seek to understand what is happening in the rest of the world; and who understand that freedom is not to limit but to share, and that with torture or extra-judicial killings in this country or that, or discrimination against women, or oppression of the weak, or impoverishment of the landless poor, your own human dignity here in Canada is attacked and you suffer too.

Whether or not you are a church-going person, you may want to join some of the church groups in Canada who are responding to the challenge of world development. For some churches are responding positively and cooperatively. The "Ten Days of World Development" in Canada is sponsored by all denominations at the national level. The established "constituency committees" of denominational and ecumenical leaders provide a pivotal point of contact and essential guidance and support.

Through the work of 180 ecumenical committees across Canada, public meetings have been held to raise the awareness of Canadians about hunger. Various formats are used, such as participatory workshops, seminars with visitors from developing countries, films, panel discussions, and public media work (radio talk shows, cable TV programs, print media, interviews, etc.). The program involves small groups meeting with members of parliament to discuss development assistance policies, and mass public action through letter-writing to MPs and government officials.

Last year, church groups in Canada concentrated on challenging the government's bilateral aid program, specifically its large tied aid and its increasing use of aid money to develop trade opportunities. Many of you in the human rights community have supported such church groups.

The seminars and panel discussions should go on to sensitize the indifferent to the need for solidarity in the struggle for justice everywhere.

3. You can give support to international institutions—including UN organizations and specialized agencies such as UNCTAD and the

ILO, and, particularly, the UN Human Rights Commission. Any country that has ratified the two international human rights-conventions and the Protocol to the International Covenant on Civil and Political Rights may be complained against by any individual or group, or by another country. (Parenthetically, this is now a practice in the European Community under the European Convention on Human Rights and Freedoms; as early as 1961, the European Court of Human Rights, in the case of *Lawless*, had already established securely the competence of the European Commission on Human Rights and of itself to examine and adjudicate the legitimacy of a government's recourse to special powers under a claim of the existence of a public emergency, and also the legitimacy of any exceptional measure that the government may have taken under colour of the exigencies of the emergency.)

Under ECOSOC Resolution 1503, such a complaint of human rights violation is considered a confidential communication and is referred to the government concerned for a reply. This same kind of complaint is possible in the International Labour Organization, for violations of ILO conventions of which the defending country is a signatory.

Of course, the tragedy is that many developing countries are not signatories to the relevant human rights and labour conventions. To the credit of the Philippine government and especially of the Aquino government, the Philippines is now a signatory to all the conventions.

Human rights groups of a particular country that consistently violates human rights may also file complaints against their own government. Of course, one must be aware that the UN Human Rights Commission itself consists of representatives of governments. The world was lucky that Canadians had in the UN bodies such eminent champions of human rights as Judge Tarnopolsky and Ambassador Yvon Beaulne. But if a repressive government happens to have a seat in the commission, one may not be able to get far in its complaints against human rights violations in the country represented by that government. A Canadian human rights group, on the other hand, could not easily be accused by a repressive government of being a front for any movement or ideology, and, therefore, its actions can have more punch before the commission.

Such groups should be mobilized in Canada. They should be trained to monitor violations of human rights everywhere in the world, and to communicate their findings to the UN Human Rights Centre and the International Labour Organization.

4. Canadians can lobby their government or their parliament—as you have been doing. The initiatives on international human rights have really come about as a result of collaboration between the human

rights community and some committees of parliament. While there is much for Canadians to be proud of, there is room for improvement as well, as the chairman has written in the preface to the Winegard Committee report. The hope is that Canadians will be successful in helping to change the emphasis from the building of things to human development.

I am glad that the Winegard Committee has endorsed the annual consultations between the Department of External Affairs and the NGO community in advance of the February sessions of the UN Commission on Human Rights. You say that the proposed further collaboration by CIDA with the Department of External Affairs in the preparation of an annual ODA-human rights review has not been accepted fully by the government? Why not then try again next year? The human rights community should be encouraged to send further briefs, to meet again with MPs, to write more letters to appropriate government officials. After all, policy is but the reflection of a dominant interest at a given time.

The Winegard Committee has made strong recommendations for a greater linkage between development assistance and human rights. And a book is coming out this year entitled *Human Rights in Canadian Foreign Policy* (edited by professors Matthews and Pratt) with former colleagues at the Human Rights Research and Education Centre at Ottawa being among the contributors. More and more academics and concerned citizens seem to be responding to the need.

External Affairs has now accepted the idea that core program countries should receive 80 per cent of direct bilateral aid, and that the important criteria for core eligibility should include respect for human rights in the broadest sense.

It is, of course, not enough that human rights promotion or protection become a policy of the government, or of the prime minister or the external affairs minister. The citizenry must ever call their attention to the need for vigorous implementation of this policy, if only because smooth bilateral relations are the most cherished objective of foreign service officers. It has been my experience, after 20 months in the foreign service, that foreign service officers are generally conservative. They abhor confrontations. Hence you have to imbue every Canadian foreign service official with a zeal for human rights, so that your own policy imperatives are properly implemented and not only paid lip service.

5. You can vigorously support international NGOs such as the London-based Amnesty International, the Geneva-based International Commission of Jurists (ICJ), the New York-based Lawyers' Committee on Human Rights, and the Geneva-based World Council of Churches. These organizations—and others of similar orientation—have

contributed in great measure towards getting governments to be more respectful of the rights of human beings in many parts of the world. Thus, during the Marcos regime, the first of two Amnesty missions to the Philippines, by strongly exposing the widespread torture and detention of prisoners of conscience, sent an alarm signal to the whole world that all was not well in my country.

For its part, the prestigious ICJ sent three missions to the Philippines. The first hard-hitting report *Decline of Democracy in the Philippines*, had input from your distinguished colleague, Professor Humphrey; and the third report, made shortly before our revolution, centred on the perversion of criminal justice in the Philippines.

Likewise, a report entitled *Salvaging Democracy*, by the New York-based lawyers' group in December 1985, greatly influenced United States–Philippine relations, playing a significant role in turning some members of the U.S. Congress against Marcos in the final months of his regime.

And so I ask, may not Canadian non-governmental organizations intensify their networks of partner NGOs in collaboration with, say, the Australians and the New Zealanders? Or with the very active human rights groups in Norway, whose recent efforts to develop systematic criteria for reviewing aid policies in the context of the human rights situation in recipient countries have been held up by the Winegard Committee as a good model?

The point is that international NGOs are ideally suited to act as monitors. Non-governmental organizations have managed to avoid the bureaucratization and politicization of UN agencies. They are able to supplement efforts of national groups from a broader base, educating politicians' self-interest in choices, and planning to advance rights rather than merely responding to violations. Paul H. Brietzke argues that international NGOs promote grass-roots organizations even more freely than UN agencies. Details of what has happened in inaccessible outbacks, and of how national legal systems are actually functioning, are collected and passed along in an expanded NGO network, along with descriptions of workable strategies. Mr. Brietzke even believes that NGOs could mediate between nations, and between a nation and UN organs.

6. Finally—and not least of all—you might ask your government to deal not only with governments on a bilateral basis, but, following your own aid strategy in *Sharing Our Future*, also directly with NGOs. Indeed, the Winegard Committee has already recommended that the Canadian International Development Agency should be encouraged to collaborate closely with NGOs in the field as part of Canadian foreign policy.

The Dutch Foreign Ministry has, for some time now, been giving aid not only to the Philippine government but to NGOs in the Philippines. The Canadian government has done it—and the German government seems poised to experiment with it.

In the tiny Netherlands, five groups are dealing directly with NGO project partners—the Foreign Office, the Socialists and Labour, the Protestants, the Catholics, and a secular humanitarian group.

Why do I end this luncheon address with NGOs? Because, as the Winegard Committee has put it, the involvement of NGOs will help to ensure that country assessments will not turn into mechanical or geopolitical exercises by the donor, but also reach down to consider the grassroots effects of aid activities on the recipient. And the Canadian Council of Churches thinks an attempt should be made to channel all existing and new aid projects through a policy filter to determine whether they contribute positively to the observance of human rights or whether, instead, they foster human rights violations.

Before closing, let me tell you why, if we really want democratic development in developing countries, we have first of all to understand that enabling the poor to participate in the political, social, and economic processes is an act of liberation and empowerment, an act of contesting the established order. Reinhild Traitler has rightly warned us that we may have to learn, if we have not yet learned, that justice is not possible without people's participation. To change oppressive or unjust social structures, the commitment of political leaders in the developing countries is necessary—but this is not enough. While a strong political will is needed to change the pattern of exploitation and poverty, nothing effective can be achieved unless and until the rural poor organize themselves to create a countervailing power to that of the politician-money lender-merchant-landlord-military-police combine.

Indeed, to make a reality of accountability and to sustain political commitment, the role of non-governmental grassroots organizations in disadvantaged sectors is essential. The principal remedy for removal of exploitation lies in the organization of workers, particularly the workers in rural areas, to protect their interests, to strengthen their bargaining power, to gain access to the means of development, and to ensure greater participation in decision making. These would also strengthen their role in the political process.

This is not to say that there are no limits to what NGOs can do in promoting and protecting human rights. Obviously, NGOs with projects whose focus is on civil and political rights will, in most cases, reap the displeasure of governments. It is only such projects as are perceived not to touch the heart of the existing order that may be tolerated. But the point is that even the admittedly limited value of NGOs can be a major boost to the standard of human rights protection in a recipient country. And obviously, too, the organization of the rural poor – and their sensitization – can be a powerful stimulus to the demand for increased articulation of the people's needs and for their greater participation in the economic and political processes of society. "Of all the lessons that have been learned about development," the Winegard Committee wrote, "none is so unequivocally clear as this: projects defined and carried out without the active participation of the people they are intended to benefit rarely produce the expected results. They remain the projects of the outsiders, unsupported and unassimilated."

Some German development aid officials are now thinking of encouraging Philippine negotiating partners in various projects under the ODA programs to involve not only government bureaucrats but also NGO representatives. In this, incidentally, they seem to have gathered inspiration from a Canadian-sponsored rehabilitation and development project in Negros Island. I have gathered from my German friends that on that project, two Philippine government officials were joined by three NGO representatives—the better to ensure that assistance would reach the poor for whom it is intended.

But let us stop here for a moment to make clear that when I speak about development assistance I mean development assistance—not charity. Some German officials have given this new strategy the euphemistic title of "Combatting Poverty through Self-Help." If you give a hungry man a fish, an old Chinese saying goes, you give him something for dinner. But if you teach him how to fish, he will have something to eat all of his life.

Many of these development ideas are followed by my own human rights group in the Philippines. It is called PROCESS—Participatory Action Research, Organization of Communities, and Education Towards Struggle for Self-Reliance.

The goal of PROCESS is to promote social, economic, and political justice through collective action and the formation of self-reliant organizations. Through the creation of self-reliant participatory organizations, the rural workers are expected to develop solidarity and organized bargaining power to promote their common interests. Living and integrating with the poor people in the community and undertaking motivational-catalytic-sensitizing work are the means used to make those people conscious of and understand the social, economic, and political structures, and to develop their capacity to participate in development through self-reliant organizations and collective action.

NGOs in the Philippines need support not only from the Canadian government but also from like-minded groups in Canada. Commitment to social action for social justice might be encouraged by like-minded souls and institutions. For the most viable organizational model to build up relations, support, and solidarity is a network. There can be local networks and there can be networks between different localities linking action units across the globe.

. . . .

The task during these waning years of the twentieth century is to make human life more humane under the stresses and opportunities of economic growth. And this can only be possible by bringing about conditions in which persons and societies are enabled to realize the full potential of human life in the context of social justice, and thus achieve the progressive fulfilment of all human rights. Development would then become a liberating process—the creation of conditions for peoples to identify their own needs, mobilize their own resources, and shape their own future.

Measuring Human Rights[*]

David L. Banks

Résumé

Les statisticiens sont souvent beaucoup moins inquiets face à des données incertaines et des problèmes mal définis que ne le sont les sociologues ou les avocats. Cela est dû au fait que notre expérience en consultation a démontré que lorsqu'on examine une question à fond, aucune donnée réelle ne correspond véritablement aux postulats nécessaires à l'analyse formelle. Toutefois, le bon sens combiné à des données incomplètes donne souvent de meilleures analyses que ne le fait un jugement incorrect associé à des données complètes. Dans cette perspective, j'examine les banques de données qui ont été recueillies jusqu'à maintenant ainsi que plusieurs programmes servant à construire de telles bases de données, d'où je tire des conclusions quelque peu controversées. Premièrement, j'insiste pour que l'on prenne moins de temps à s'assurer de la précision des données mais que l'on accorde plus d'attention à élargir le champ d'étude à l'ensemble des droits de la personne ainsi qu'à étendre la période de temps pendant laquelle on étudie les droits. Deuxièmement, j'accorde généralement de bonnes notes aux banques de données recueillies par Humana (1983, 1986, 1987) et Taylor et Jodice (1982); ces deux sources sont à mon sens plutôt sous-estimées dans la littérature sur les droits

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[*] The author is deeply grateful for the many substantive suggestions provided by Herb Spirer, Charles Humana, Irving Brecher, and an anonymous referee.

de la personne. Enfin, je souligne le fait que la question la plus importante à poser lorsqu'on établit une base de données est de savoir quelle est la nature des questions qui y seront adressées. On devrait accorder beaucoup plus de temps à formuler précisément les questions que les groupes de défense des droits de la personne veulent comprendre et cela devrait orienter la cueillette des données. Je fais la liste des questions qui m'intéressent mais j'encourage fortement les spécialistes du développement régional à identifier les sujets qui leur semblent les plus pertinents.

1. The Backward Statistician

I have read many papers on measuring human rights that were written by political scientists and social theorists, and they all seem to follow the same sort of pattern. The authors open with a graceful introduction that stresses the importance of clear definitions, cross-cultural consistency, and scholarly objectivity. This leads to a discussion of the philosophical issues involved in the substance and theory of human rights, followed by an examination of the obstacles to implementing good methodology. Next comes a critique of previous work in the area, which is often very lively; the authors are wonderfully attentive to the motes in the methodological eyes of their colleagues. Finally, there is a brief, very cautiously worded statement of their own conclusions. Regrettably, most of the conclusions are negative, and pertain to the sorts of inferences that cannot be drawn at the present stage of research in the area. Often, the finale is a description of a more rigorous program which, given sufficient time and money, might be able to address some of the outstanding questions.

Levi-Strauss (1963) said that "The anthropologist and the historian are walking along the same road in opposite directions facing backwards." I have no idea what he meant, but perhaps it is similar in spirit to the reversal in approach that a practising statistician brings to the human rights arena. The statistician tends to start by looking at the data, asking what meanings might correspond to the measurements that have been made. Then the statistician asks what sensible questions might be answered by examining these data.

The basis for our backwardness is that virtually all clients collect their data before consulting the statistician. Although we can be enormously helpful in designing efficient data collection efforts that hit precisely at the research hypotheses, in practice we are usually handed some rather unreliable data and asked to prove the investigator's conclusion. But the statistician is sanguine. He (she) knows that unless the investigator is dishonest or the problem entirely vapid, there is a very good chance that a combination of common sense, a good understanding of the problem, and a large statistical toolbox will make significant process towards a reasonable solution.

This is not to say that all problems can be solved; nor is it any attempt to undermine the research methods of other disciplines. Instead, this article will champion the virtues of pluralism, both politically and scientifically, and show how a representative from the field of applied statistics looks at the problem of measuring human rights.

In keeping with my indicated backwardness, I shall postpone all definitional and philosophical questions until after the survey of available human rights data-sets. Their practicality will, I hope, inform the more abstract issues that follow. The third section discusses the sorts of research questions we can ask; the fourth section evaluates my favorite human rights data-base, and the last section makes specific proposals for improving human rights measurement and draws general conclusions.

2. Previous Attempts at Measuring Human Rights

This survey of efforts to measure human rights proceeds chronologically. A major source for much of the bibliographic history is Bollen (1986), who did a computer-assisted literature search. He notes that several investigators escaped the computer net, and no doubt others have eluded my slightly extended list.

Some of the projects described here actually went so far as to collect and publish their data; others simply suggested a strategy for assessing freedom. I cannot describe all of the details, nor shall I attempt to point out all of the possible flaws. Instead, I give a quick gloss of each approach, highlighting the most substantive merits and drawbacks and trusting the perceptive reader to spot the others. My own view is that the advantages and disadvantages of the different proposals are mostly apparent under fairly cursory inspection, so it would be a crime against the reader to impose a tedious and detailed critique. The third section will undertake some comparisons, but it concentrates on the topics that I think are most important to future developments in this area, rather than making any attempt at balanced appraisal.

Fitzgibbon and Johnson. The earliest attempt to quantify political rights that I know of was started by Fitzgibbon (1951), and carried on by Johnson (1976, 1982). They put together 15 indices of political democracy on 20 Latin American countries, starting in 1945 and proceeding in five-year intervals up to 1980. The most pertinent of the 15 indices are measures of (1) the fairness of political elections, (2) freedom of speech, (3) freedom to organize politically, (4) independence of the judiciary, and perhaps (5) civilian control of the government. All of these indices are averages of ratings assigned by several area experts.

For present purposes, the chief drawback of these data is that they do not capture the full range of human rights, but only a small selection of political liberties. Also, the coverage of the survey is very small, and includes only nations that enjoy a relatively homogeneous heritage. On the credit side, the accuracy of the data appears to be very high.

Gabor and Gabor. Another early attempt to quantify human rights was undertaken by André and Denis Gabor (1954). André is a noted mathematician; Denis won the Nobel prize in physics in 1971, for inventing holograms. Their treatment was largely motivated by the analogy between entropy in thermodynamics and social pluralism (and perhaps by sympathy with Hungarian compatriots); the result has not proven as practical as they must have hoped, but it may have inspired subsequent attention by theoretical economists who study public choice.

Essentially, the Gabors sought to quantify human freedom by the diversity of choices exercised in a population. The natural application is to a multiparty political system but the other central example in their papers concerns the extent to which sons choose different professions from their fathers. The authors give care to the problem of false diversity arising through some sort of governmental charade (e.g., approving several candidates for an election, but each endorses the same political agenda). They also acknowledge that thoughtless application of the ideas in their paper could yield misleading inferences, and urge anyone attempting application to be cognizant of the hazards and exercise responsible judgment.

Most of the paper concerns the mathematical properties of different indices of diversity. These indices are generally prompted by Shannon's work in communications theory, but subsequent discussion in the Royal Statistical Society suggested alternative measures that may guard against either distortion or unreliability. The general tenor of the comments, particularly those of Barnard (1954), suggests that members applauded the aims but doubted the success of the Gabors' approach. They appeared to feel that there were no intrinsic mathematical obstacles, but only practical problems of collecting data on choice diversity, followed by much thankless and hair-splitting drudgery trying to evaluate the breadth of available choices.

The British discussants were probably too polite to mention this, but it seems that a further difficulty is that even if the project were entirely carried out in the best possible way, no government or major group could endorse its conclusions. To command popular indignation concerning the domestic political arrangements of a foreign government, one probably needs more emotional ammunition than a set of mathematical calculations which say that the oppressed are in excessive mutual agreement.

Arthur Banks. I should emphasize at the outset that Arthur Banks is not known by me to be a relative, although I admire his work and would claim him if I could. He has collected data on a variety of social, political, and economic indices for a large set of nations for the period from 1950 to the present. These indices are described in Banks (1971, 1979) and are available in computer-readable form in the *Cross-National Time-Series Data Archive*. Although most of the indices do not pertain to human rights, several do. These include assessments of the openness of the political nomination process and the freedom of opposition political groups. A few other indices may be cobbled together to provide a basis for intelligent inference about political or economic rights. All of these assessments are made on a three or four-point ordered scale.

The chief difficulty with Banks' work from the standpoint of human rights evaluation is that it covers only a small class of freedoms. One wants to have a broader picture of human rights; for example, this data-base does not include information on disappearances, religious persecution, or the plight of minorities. But one must applaud Banks' success at compiling what most critics view as an exceptionally clean and accurate set of ratings; unfortunately, their human rights relevance is essentially tangential.

Taylor and Hudson, Taylor and Jodice. Taylor and Hudson (1972) undertook a significant extension of the original *World Handbook of Political and Social Indicators*, which led to the inclusion of two variables that have some bearing on political rights. The first is a three-point measure of electoral fairness at four time periods (1950, 1955, 1960, and 1965) for a large number of nations (82, 90, 101, and 97, chronologically). The second variable records the number of sanctions imposed by the government in response to perceived internal threats. There are three types of actions counted as sanctions: (1) censorship of books, articles, or newspapers, (2) restriction on political participation, for example through declaration of martial law, establishment of curfews, or troop mobilization, and (3) arrest or detainment of citizens on charges of espionage. This variable is assessed annually from 1948 to 1967 for 136 nations, and relies largely on established international newspapers.

Later, Taylor and Jodice (1982) extended the *World Handbook of Political and Social Indicators* to bring the coverage to 1977. They also included many additional variables that are pertinent to human rights; these are summarized in Table 1.

Table 1:
Human Rights Indices Collected by Taylor and Jodice

Armed Attack:	An act of violent political conflict carried out by (or on behalf of) an organized group with the object of weakening or destroying the power exercised by another organized group.
Political Assassination:	A politically motivated murder or attempted murder of a national leader, high government official, or politician; this excludes attempts that did not get past the planning stage.
Coup Attempt:	An attempt by an organized group to remove the incumbent national executive by unconventional means; plots do not count.
Coup:	A change in the national executive or ruling group that is accomplished outside the customary legal mechanisms.
Deaths:	The number of deaths accruing from armed riots and attacks. The coding rules are complicated, and corrections have been made when undercounting seemed probable.
Election:	A collective choice by a body of people entitled to vote; this may involve a leadership or policy issue.
Executive Adjustment:	A change in the composition of the ruling group, such as a cabinet coalition shift. It is not a transfer of power from one ruling group to another.
Executive Transfer:	A change in the national executive or ruling group that is accomplished by customary legal mechanisms.
Loyal Opposition:	An unsuccessful attempt by a group not holding the executive office to gain that office through legal means.
Political Execution:	The elimination of a political dissident.
Political Protest:	A non-violent gathering to protest a regime, its policies, or its leaders.
Re-election:	The re-establishment of the executive or ruling group through customary legal channels.
Riot:	A violent demonstration or disturbance.
Sanction:	Actions taken by the government to suppress or eliminate a perceived threat to the security of the regime or government.
Sanction Removal:	This counts actions that modify or remove restrictions scored in the previous index.
Strike:	A work stoppage by labourers or students to protest a regime's policies or actions.
Support:	A non-violent gathering to show support for a regime or its policies.

Notice that the recorded data largely concern political freedoms. There is no information in this data-base on the status of women or minorities, and one cannot fully assess compliance with the range of freedoms specified in the Universal Declaration of Human Rights. Also, it is regrettable that the definitions used in this study exclude many sorts of casual political killing; for example, not a single political execution is recorded for El Salvador, due to the very strict definition employed in the coding.

The Taylor and Jodice extension is particularly valuable since it includes daily data for many of the variables in Table 1. This is possible since the data-base is compiled by monitoring the major international news media. Bollen (1986) points out some possible flaws with this program, in terms of bias and inaccuracy, but it is hard to imagine any practical remedy that would attain such complete and detailed coverage. He also points out that counting sanctions may be inherently unfair, in that relatively free societies have more sanctions available to impose, while unfree societies either have them as defaults or have so intimidated the population that sanctions are unnecessary.

Gastil. Raymond Gastil is the director of Freedom House; for each year since 1973, that organization has published two indices of freedom for every nation in the world. The first index pertains to political liberties, and broadly assesses the status of specifically political rights. The second index does the same for civil liberties. Both indices are scored on a seven-point scale. Gastil (1986) examines the ratings from 1973 on, and summarizes the entire data-set. He also describes the current definitions and criteria used in determining the ratings.

The basis for formulating the ratings is a Delphi method, a technique that (somewhat informally) combines the results of extensive roundtable discussions with regional experts and scholars. Historically, there has been reliance on ratings garnered by other researchers, such as Arthur Banks, and major international newspapers. Scoble and Wiseberg (1981) have criticized Gastil's ratings as being biased towards Western industrial democracies; if true, this bias is not so great as to lead his project into serious disagreement with most of the other studies in this area. This is also the viewpoint of McCamant (1981), who lists several disagreements with Gastil's ratings, but finds no ideological bias "except perhaps for a strong distaste for Cuba."

From a statistical perspective, the two most serious problems with Gastil's data are that: (1) the indices do not provide very much insight regarding specific sorts of human rights abuse, and (2) the two indices are essentially only a single index. D.L. Banks (1986) reports a correlational analysis of the political and civil liberties scales for each year, starting in 1973. The lowest correlation coefficient was .90, and values were typically .93 or higher. This strongly implies that the two scales provide essentially identical information, and should properly be regarded as a single rating.

Duff and McCamant. Duff and McCamant (1976) give annual ratings on political rights from 1950 to 1970 for 20 Latin American nations. They assess four aspects of political freedom: arrest and/or exile of political opponents; abrogation of constitutionally guaranteed rights; restrictions on the organization of political parties; and news censorship.

The consensus in the scholarly wing of the human rights community is that this is high calibre work. My only small criticism is that the ratings were assigned long after the political events, and hindsight may well have sharpened the judgment used in the scoring process, leading others to over-estimate the predictive and descriptive quality of the measurements.

Rummel. Rummel (1976) describes a data-base on national indices that his group compiled and has made available through the Inter-University Consortium for Political and Social Research. This project includes a large number of political and socio-economic measurements for between 70 and 100 nations, principally in 1950, 1955, 1960, 1963, and 1965. For human rights purposes, the most interesting indices assess: (1) the openness of the political process, (2) the freedom of opposition, (3) censorship of the news media, (4) whether the political leadership is elitist, and (5) whether the political structure is totalitarian or constitutional. All of these indices are reported on a three-point scale.

This work is well regarded, but somewhat vague about the definitions of the freedoms involved. To my mind, the most serious drawback is that it is now rather dated, and it includes no information on civil liberties and other non-political freedoms.

Humana. Charles Humana has published three sets of international human rights ratings (1983,1986, and 1987). I have analyzed the first two data-sets (Banks 1985, 1989); and in contrast to the views of many social scientists, my statistical opinion is that their quality and scope make them the most valuable source of human rights data that is currently available. There are minor flaws in his project, and I shall point these out in subsequent discussion.

Each of Humana's ratings scores very specific sorts of freedoms or rights on a four-point scale. The 1983 data describe 74 nations; the 1986 data describe 89. The original set of 40 indices is shown in Table 2. It includes a great variety of political and civil liberties, and pays unusual attention to the status of women and minorities.

Table 2:
Humana's 40 Rights/Freedoms in 1983

Abortion:	Right to early abortion.
Alcohol:	Right to purchase and drink alcohol.
Anti-government:	Severity of punishment for non-violent anti-government activities.
Any Religion:	Freedom to practice any religion.
Assembly:	Right of peaceful assembly and association.
Banned Literature:	Severity of punishment for possession of banned literature.
Books:	Freedom of book publishing.
Birth Control:	Right to use contraceptive pills and devices.
Capital Punishment:	Prevalence of capital punishment by the state.
Conscientious Objection:	Severity of punishment for refusing compulsory national service.
Cost of Force:	Proportion of national income spent on police and military.
Detention:	Freedom from police detention without charge.
Divorce:	Right of divorce (for men and women equally).
Emigration:	Freedom to leave own country.
Ethnic Languages:	Right to publish and educate in ethnic languages.
Force:	Ratio of police and military to citizens.
Freedom in Art:	Freedom from state policies to control artistic works.
Freedom of Information:	Right to seek information and teach ideas.
Freedom of Mail:	Freedom from censorship of mail.
Freedom of Press:	Freedom from political press censorship.
Freedom in Work:	Freedom from directed employment or work permits.
Homosexuality:	Right to practise homosexuality between consenting adults.
Independent Courts:	Right of all courts to total independence.
Keep Citizenship:	Freedom from deprivation of nationality.
Military Service:	Freedom from compulsory military service.
Mixed Marriage:	Right of inter-racial, inter-religious, and civil marriage.
Movement in Nation:	Freedom of movement within own country.
No Ideology:	Freedom from compulsory religion or state ideology in schools.
No Search:	Freedom from police searches of home without warrant.
Political Opposition:	Right of peaceful political opposition.
Prove Guilt:	Right of assumption of innocence until guilt proved.
Public Trial:	Freedom from civilian trials in secret.
Punishment:	Freedom from corporal punishment by state.
Quick Trial:	Right of accused to be promptly brought before judge or court.
Slave Labour:	Freedom from serfdom, slavery, or forced child labour.
Torture:	Freedom from torture or coercion by state.
TV and Radio:	Freedom of radio and television broadcasts from state control.
Union:	Right of independent trade unions.
Weapons:	Lethality of weapons normally carried by civil police.
Women:	Right of women to equality.

Humana's 1983 data-base was widely criticized on many fronts. His subsequent two books respond to these points in several ways. First, he now specifies the time-frame for his ratings very precisely; second, he includes an introductory section that addresses certain methodological issues; third, he has changed some of the original 40 indices to attain closer correspondence with the articles of the Universal Declaration of Human Rights. Table 3 shows the changes that were made in the indices. The first 11 indices listed were removed from consideration, and replaced by the last 11 indices.

Table 3:
Changes to Humana's 40 Rights/Freedoms in 1986

Abortion:	Right to early abortion.
Alcohol:	Right to purchase and drink alcohol.
Anti-government:	Severity of punishment for non-violent anti-government activities.
Banned Literature:	Severity of punishment for possession of banned literature.
Conscientious Objection:	Severity of punishment for refusing compulsory national service.
Cost of Force:	Proportion of national income spent on police and military.
Divorce:	Right of divorce (for men and women equally).
Force:	Ratio of police and military to citizens.
Military Service:	Freedom from compulsory military service.
Weapon:	Lethality of weapons normally carried by civil police.
Women:	Right of women to equality.
Ballot:	Right to multiparty elections by secret ballot.
Disappearance:	Freedom from extra-judicial killings or "disappearances."
Equality in Marriage:	Equality of sexes in marriage and during divorce.
Ethnic Equality:	Right of ethnic minorities to social and legal equality.
Legal Aid:	Right of accused to free legal aid when necessary.
Monitor Rights:	Freedom to monitor human rights violations.
Party Member:	Freedom from compulsory membership in state parties.
Private Property:	Freedom from arbitrary seizure of personal property.
Publish Papers:	Freedom for independent newspaper publishing.
Women's Rights:	Right of women to political and legal equality.
Women's Social Equality:	Right of women to social and economic equality.

In examining Table 3, I think that the chief difference is the omission of any measure of military service as an infringement on personal liberties. This was prompted by loud reluctance on the part of many Western Europeans to endorse his work, since they felt that it penalized their nations unfairly. Thinking broadly, I have to say that military service is a major infringement on one's freedom, but such infringement is not intrinsically wrong. There are many reasoned defences of military service, and this is an area on which rational disagreement is possible; however, I do not think there can be disagreement that it is in fact a restriction of liberty. Thus I wish that Humana had retained those indices, and that his critics would work on larger issues, rather than quibbling over 2 of the 40 inches (I am reminded of undergraduates scrounging for points after a statistics exam).

Stohl, Carleton, Lopez, and Samuels. Stohl et al. (1986) have not compiled a data-base, but they have urged that others adopt a trivariate approach to human rights ratings, based upon scope, intensity, and range. Their view is that human rights abuse is a multivariate phenomenon, and that the three natural dimensions are:

1. Scope: This index measures the force of the oppression; a low value indicates personal inconvenience, and a high value indicates execution after torture.
2. Intensity: This index measures the frequency of human rights abuse. Low values might correspond to a few bad apples on the police force, while high values indicate that rights deprivation is a regular tool of the government.
3. Range: This variable indicates the size of the population whose rights are abused. Low values suggest that only a small minority (perhaps ethnic or religious) suffer; large values imply a nation in bondage.

I agree that human rights is a multivariate phenomenon, but I do not see this breakdown as the most obviously desirable. For example, it is generally important to know something about the abused population in the range variable; are they women, an ethnic minority, or a political group? Depending on the answer, different sorts of response are appropriate. Similarly, one might want to include an index that measures the capriciousness of rights violations; oppression by consistent rule of law seems somewhat more endurable than equivalent values of the scope-intensity-range variables that are implemented at the whim of soldiers.

More strongly, I have to be leery of any approach to a complex problem that layers on abstractions and uses introspection rather than exploration to identify the important features of the problem. Stohl et al. (1986) write:

> At its best, social science measurement proceeds in five general steps: (1) an important social concept is delineated, in this case human rights; (2) the relevant dimensions of the concept are specified and disaggregated; (3) each of these dimensions is operationally defined and calibrated; (4) each dimension is measured; and (5) if appropriate and desired,

> the constituent dimensions are reaggregated into a composite measure.

I do not understand this prose; no doubt, anyone with a master's degree in sociology can disaggregate seven dimensions before breakfast, but I am an embarrassingly ignorant data analyst. In any event, this research paradigm seems very foreign to me; I think that hard problems call for exploratory data analysis, simply to discover what sort of underlying structure may exist. Furthermore, there are many statistical tools, such as factor analysis or principal components analysis, that are specifically designed to discover latent dimensions in complex data-sets.

Other Works. Bollen (1980) develops an index of political democracy for 1950, 1955, 1960, and 1965; Arat (1985) develops a similar democracy index, reported annually from 1948 to 1977. Both of these authors use data from Arthur Banks' *Cross-National Time Series Data Archive* and Taylor and Hudson's *World Handbook of Political and Social Indicators III*. Aborn and Demko (1984) list some candidate-indices for human rights abuse that are based on *The OECD List of Social Indicators*, and Evan (1984) examines the values of variables obtained from legal documents. Nixon (1960, 1965) has rated press freedom for 85 countries in 1960, and 117 countries in 1965. Similarly, Lowenstein (1967) has ranked nations on "press independence and critical ability," using expert native and non-native informants.

There are non-quantitative data for human rights behaviour too. The U.S. State Department publishes the Annual Country Reports on Human Rights Practices, which summarize rights behaviour for virtually all nations in the world. Naturally, these reports have been criticized as politically biased, but de Neufville (1986) offers a rationale for hoping that his bias might be less pervasive than one might fear. Also, the Amnesty International reports permit some sort of broad understanding of national behaviour, although Amnesty International (1984) specifically eschews attempts at international comparisons based on any sort of social science measurement.

3. What Are the Questions?

Before collecting data or evaluating data-sets, any practical person has to decide what sort of questions they want to ask. In the human rights context, some natural questions include:

1. Can one meaningfully compare two countries with respect to human rights practices?
2. Can one decide that human rights behaviour in a particular country is improving or deteriorating?

3. Can one classify patterns of human rights behaviour?
4. Can one describe patterns of change in human rights behaviour?
5. Can one discover practical interventions that affect human rights behaviour for the better?
6. Can one build an abstract theory of human rights that will explain/predict national behaviour, and enable quantitative comparisons of all governments to be made?

The first two question are almost trivial. The obvious multivariate character of human rights behaviour makes some comparisons difficult or impossible, but partial orderings clearly exist, both between nations and within nations. I do not think one can deny that Sweden is more free than Ethiopia, nor can one disagree that Argentina today has fewer rights abuses than Argentina a decade ago. (Actually, I am aware that there are relativists who take exception to precisely these sorts of assertions, but I urge them not to read this article.)

The last question is a bone for contention. I do not think that any particularly exact abstract theory will emerge; in my judgment, the problem is too complicated and national leadership too idiosyncratic. Nonetheless, I have the sense that many researchers in this area either strive for this sort of model, or criticize colleagues whose proposed models fall short of this level of perfection. As an example of excessive optimism, McCamant (1981) undertook to discover "how much one kind of oppression was worth in terms of the other kind," and was led to such conclusions as East Germany being "probably two hundred times more severe in 1976 than was the Federal Republic of Germany, but Uganda was still a hundred times worse." Similarly, the program sketched by Stohl et al. (1986) seems tied to a higher level of abstraction than the data can reasonably support; I wish them luck, and will wildly applaud any new insights generated by their labours, but at the moment it sounds too much like psychohistory (cf. Asimov 1942). As a realistic goal, I think this field will be doing very well if it can explain even 20 per cent of the total variablility in any sensible set of human rights indices.

The third, fourth, and fifth questions raise interesting challenges at the border of what seems theoretically feasible. I strongly urge continued attention to these areas, and hope that attempts at human rights measurement will be alert to the concommitant requirements concerning the sort of data collected and the level of data quality that is needed.

Having taken the first five questions as our research agenda, the good statistician asks what sort of data should be mustered to address these issues (and, in almost the same breath, whether any of the existing data-sets are reasonably satisfactory). Three basic desiderata emerge:

- multivariate coverage
- qualitative accuracy
- temporal coverage.

If one does not collect data meeting these minimal standards, then it is epistemologically impossible to answer the questions we have posed.

It seems obvious that human rights are multivariate, so one needs a variety of indices to capture the diversity of national rights behaviour. The Universal Declaration of Human Rights is not exhaustive, but it implies a wide range of political, legal, and social rights (cf. Tables 1, 2, and 3). Moreover, McDougal, Lasswell, and Chen (1980) suggest that leisure time, medical security, and even guaranteed standards of living should be viewed as human rights. While it may not be practical to include all of these aspects as components of human freedom, it is nonetheless worthwhile to measure as many different facets as is sensible. With reasonable judgment, this ensures that one counts apples and oranges on separate scales.

Human rights data are intrinsically fuzzy; qualitative accuracy is the best we can expect. For example, we will never know precisely how many people disappeared in Argentina, and it would be ludicrous to attempt any inference that is sensitive to small changes in such numbers. In human terms, each life has enormous value; for statistical purposes, we can be well pleased with qualitative, order-of-magnitude accuracy. Furthermore, in terms of characterizing national policy with regard to such things as political murder, the salient differences appear at the 0-10, 10-100, 100-1000, etc., range (actually, one should first standardize to a per capita rate, but this generally will not make any difference). Therefore I suggest that it is wasted effort to spend much time polishing data accuracy; if we can say anything reliable about the first five questions, it must be accomplished with very imperfect data. This contradicts the views put forward by Bollen (1986), Goldstein (1986), and Stohl et al. (1986), all of whom urge better standards of reporting, increased reliance upon multiple sources, native informants, and so forth. Some seem to feel that no sparrow should fall without a human rights activist being there to measure the impact; but from a statistical standpoint, this extreme is not a productive use of scarce rights resources.

Finally, for questions 2, 4, and 5, temporal coverage is crucially important. The human rights time series is notably noisy, which makes trend detection very difficult; the only hope of success comes from either a very long stretch of consistently measured indices, or a political upheaval that signals a major shift in national policy. From the scholarly standpoint, it is far more important to understand gradual change (which might, over a sufficient period of time, accumulate enough momentum to trigger a political upheaval). The NGO effort at human rights monitoring should strenuously encourage longitudinal studies.

4. What Data Do We Use?

Having stated the basic criteria, there are only two data-sets that generally come close to meeting the needs. The first is that of Taylor and Jodice (1977), which shines because it is fairly multivariate (but focuses on political rights), qualitatively accurate (aside from serious criticisms raised earlier), and tracks many indices on a daily basis for a significant span of time (daily measurements are probably overkill, but one can always pool the data). The second excellent data-base is that of Humana (1983, 1986, 1987). This data-base has outstanding multivariate coverage and is qualitatively accurate; it does not yet have sufficient temporal coverage to address some of the questions, but one hopes that the project will continue. Of course, if one is only concerned with questions 1 and 2 for political liberties regarding particular countries in Latin America, then the Duff and McCamant or Fitzgibbon and Johnson data-sets might be more pertinent.

The Taylor and Jodice data-base is widely accepted, and its faults are generally understood. As mentioned previously, its definitions of some sorts of rights abuse, such as political execution, are too narrow. Nonetheless, it is often viewed as a model for social indicator research. Banks (1986) uses it for an examination of trends over time in human rights data, and thinks he finds some moderately interesting results. He hopes that further extensions will broaden the human rights coverage and increase the time span.

In contrast, Humana's data-sets are still extremely controversial. Since I think that they are probably the most useful data-sets available, I feel obliged to address the criticisms in greater depth than I have undertaken with the other collections.

Humana's original work was severely criticized on several grounds. Besides issues raised in section 2, Stohl et al. (1986) state that Humana "showed a singular lack of the methodological knowledge required for such a task," and indicate that his scales are "presented in a style reminiscent of *Consumer Reports Buying Guide*." As both a statistician and a consumer, I object to the implicit sneer at *Consumer Reports*; I think that its style is an admirably lucid way of presenting complex multivariate data in an immediately comprehensible form. I have to applaud any researcher who reports his data with the same attention to clarity and convenience.

Regarding the methodological criticism, which is quite vague, I must guess that it refers to: (1) the fact that Humana used newspaper stories as part of his information base in determining ratings, (2) the fact that Humana used questionnaires sent to government embassies as part of his information base, and (3) Humana's lack of an academic degree in a social science. Perhaps there are other problems as well, but these points must be made explicitly if they are to be constructive.

Concerning newspapers, this source has been used by many of the data-bases described above. Bollen (1986) and Goldstein (1986) both spend a great deal of energy pointing out the limitations of newspapers, and I think that any reasonable person would agree with all of their points except the conclusion. I freely stipulate that newspapers offer uneven and biased coverage; nonetheless, a skeptical reader who conscientiously follows the news nation by nation in a variety of international newspapers is unlikely to be seriously misled, especially if (as in this case) the newspaper accounts are supplemented with Amnesty International reports and reports from native informants. One expects that the qualitative accuracy from such a program (if carried out in an intelligent and fair-minded manner) would be quite adequately high for at least 95 per cent of all nations.

Regarding questionnaires sent to embassies, Humana (1986) clearly indicates in the preface that these results are not accepted at face value. One of the chief purposes of the questionnaires was to acquire copies of each nation's constitution, in order to discover what specific legal rights that nation is pledged to provide, and thus better gauge any departures in practice. Furthermore, it would be the height of unscholarly partiality not to examine the government's own description of its human rights record. Also, according to Humana, the pattern of evasions is frequently a useful piece of information. Furthermore, in terms of attaining a better understanding of the socio-economic mechanism of human rights abuse, a government's rationale may lead to insights. For example, rights may be denied to dissident political groups, minority religious sects, or to women, and each of these categories involves a different governmental rationalization; and any international effort to improve the situation must take account of the government's perception of the situation.

Regarding Humana's lack of an academic degree in sociology or political science, I do not see this as much of a handicap. Of course, I am an outsider too, so perhaps I am biased, but I strongly feel that sometimes a breath of outside air is a useful contribution. Furthermore, Humana has worked as a journalist and with PEN and Amnesty International, which seems very good practical training for the sort of work that he has undertaken. At the very least, the quality of his work should be the key concern, and not the professional clique to which the researcher belongs (if I wanted to be tedious, I could list dozens of stellar contribution to mainline scholarship that are entirely due to informal scientists).

Based on the foregoing comments, the crucial concerns about Humana's data are whether it is accurate, and whether useful human rights research can be done with it. In Banks (1985, 1989) I address both of these questions. First, I undertake a comparison of Humana's data with Gastil's; I find extremely high correlation coefficients, and only a few cases in which the judgments disagree (for the most recent data, the only discrepant case is Panama; Humana thinks rather better of it than does Gastil). I would certainly encourage others to do additional work to discover whether Humana's ratings are substantially different from those developed by other researchers.

Correlational analysis should not be blindly heeded, so I have also attempted to validate Humana's 1986 data in other ways, such as an informal experiment in the spirit of Themistocles. (Herodotos (ca. 444 B.C.) reports that after Themistocles' strategy saved Greece in the Battle of Salamis, the Greek captains voted to give a prize to the officer who most significantly contributed to the victory. Each captain voted for himself first, with Themistocles as second choice.) Six graduate students in statistics—one each from Chile, Ethiopia, Mexico, China, Taiwan, and West Germany—were asked to examine Humana's ratings of their own nations, and each of the other students' nations. All but the West German decided that the aggregate ranking of their nation was too low, but that the ratings for the other nations were apparently correct (the West German agreed with all scores). Next, each was asked to criticize Humana's ratings of specific freedoms in their own countries; only two changes were suggested, and both lowered their country's scores. The Mexican student said there was considerable pressure to join the PRI (the leading political party), and so the score on "party member" should be lowered. Similarly, the Chinese student pointed out that Humana's rating of China as very free with respect to "birth control" was misleading, in that China strongly enforces birth control, rather than permitting freedom of choice.

Besides accuracy, the other yardstick for assessing Humana's contribution is whether useful human rights work can be based on his data. Banks (1985, 1989) attempts to do useful work, and it is not my place to judge the success of the results. However, my own view is that the exploratory analyses suggest that nations tend to exhibit a rather small repertoire of human rights behaviour. For example, in 1983 I find seven clusters, which might be characterized as:

1. western industrialized democracies that do not require military service
2. western industrialized democracies that do require military service
3. communist nations that exile dissidents
4. communist nations that do not exile dissidents

5. fundamentalist Islamic regimes
6. progressive Third World nations
7. authoritarian Third World nations.

Similar categories appear in the 1989 study; two additional clusters that emerge are Catholic Third World nations (largely in Latin America; these were almost sufficiently cohesive to form a cluster in 1983) and a middle-ground group of progressive Third World nations. Of course, a different investigator using different tools might be led to different conclusions. Such divergence is not intrinsically bad, if it leads to plausible alternative groups that suggest sensible things to the investigators.

The practical value of recognizing this sort of clustering is that it enables groups that work for rights reform to target specific patterns of problems. For example, the progressive Third World nations probably respond best to international scrutiny, encouragement, and a general climate of economic stability. The authoritarian regimes may respond better to international sanctions or specific financial inducements. Similarly, issues of women's rights are presumably much more acute in the fundamentalist Islamic nations than in the Communist nations, and one sees that success must depend on the development of strategies that do not collide with religious doctrine.

Banks (1985, 1989) also attempts to find social and economic indices that help to categorize human rights practices. This work is very tentative, but it does suggest a strategy for studying the social context of human rights abuse. Intuitively, one suspects that poverty, low average levels of education, and external military threats all contribute to high levels of rights abuse, at least for some of the clusters, but it is desirable to show these connections in a formal way.

Based on these results, I have to conclude that Humana's data-set is one of the two most valuable sources in the human rights area. It lacks temporal depth in comparison with the Taylor and Jodice study, but it has significantly greater coverage of the variety of human rights.

As a point of clarification, I must emphasize that I am not unduly wedded to the data of either Humana or Taylor and Jodice. I have pointed out several changes and extensions that I would like to see, and I certainly would be curious to discover whether a scale-intensity-range project could yield new knowledge. Nonetheless, as a statistician who typically has too little input to the data collection process, I know that good sense and imperfect data can often carry one further than bad sense and perfect data. Since this area has strong moral urgency, I want to encourage people to spend less time polishing methodological protocols, and more time actually working with the adequate data that are available. In this regard, I particularly recommend the data-sets of Humana and Taylor and Jodice to researchers' attention.

5. Recommendations and Conclusions

Having surveyed the data, identified some pertinent research questions, and selected the data-sets that are most likely to inform examination of those questions, it is now time for a good statistician to make specific recommendations. These recommendations largely concern the role that non-governmental organizations (NGOs) can play, but this is not entirely separate from the academic wing of the human rights movement.

First, I strongly urge that more effort be spent on the breadth of the data collection effort than on the accuracy of the data. I realize this sounds like heresy, but statisticians are used to handling bad data, provided there is enough of it and provided that it has a reasonable level of qualitative accuracy. In particular, I think that it is important to document a variety of freedoms; at a minimum, this should include all those listed in the Universal Declaration of Human Rights. Moreover, it is probably worth additional effort to evaluate such things as military service, the right to education, and basic standards of living (some of these are implicit in the Universal Declaration of Human Rights, but get lost in the dazzle of publicity that attaches to political and religious freedoms). In precisely the same spirit, one wants to have human rights measurements stretching over a period of several decades. Without time depth, it is impossible to hope to understand the process of human rights change.

Second, and proceeding from the previous point, I hope that various parties will work to ensure the continuation of the collections begun by Taylor and Jodice and Humana. The value of these databases increases non-linearly with the length of time they are maintained and the breadth of coverage they provide. I have not heard whether anybody intends to extend the Taylor and Jodice data-base, but this project seems clearly worthy. Disturbingly, Humana's contributions have not received the serious attention that I think they deserve, and I review this as a serious failure on the part of academic research. At the very least, his efforts have broken new ground, and deserve more reflective criticism than they have hitherto received. I regret to report that I have recently learned that Humana has decided to discontinue his data collection effort.

Third, I think that the time has come to focus attention on the specific questions that human rights groups want their data-bases to address. Too much time has already been lost while we waited for scientifically measured, cross-culturally valid data to appear. Instead, we should let our agenda dictate data collection. In particular, I think that it is important to understand: (1) how human rights conditions change over time, and (2) what sorts of basic patterns of behaviour nations show with respect to human rights.

The first question is crucial to any attempt to influence human rights performance. I strongly suspect that improvement is generally not monotonic, and that increasing levels of freedom can encourage more aggressive demands for liberties, leading desperate governments to reduce the level of freedom once again. Thus it seems worthwhile to discover more about conditions under which various sorts of human rights trends occur. In particular, different kinds of international or NGO pressure may lead to different trend patterns. In some cases, it might even happen that overt criticism or sanctions may be destructive of human rights progress; for example, the Reagan administration believed that an economic embargo on South Africa would hurt rather than help the victims of *apartheid*. I am extremely reluctant to endorse that position, but any rigorous refutation or defence of the Reagan rationale requires a longitudinal study of human rights change that no one has yet undertaken.

Regarding the second question, it seems trivial to state that different nations with different histories practise different sorts of rights violations. No single strategy will apply to such diversity. Probably human rights groups will have to tailor their work to the situation of particular countries, and this requires a general understanding of the patterns of national human rights behaviour. In particular, there are some nations that are probably impervious to everything except an external overthrow, while others will improve if the domestic economy prospers and foreign threats do not materialize. Non-governmental organizations must target their limited resources at those nations in which their activities will have the greatest chance of success. For example, if one stipulates the validity of the seven clusters of nations described in section 4 above, then specific sorts of NGO activity might be recommended. Nations in clusters 1 or 2 probably benefit most from the activities of organizations such as the American Civil Liberties Union; nations in clusters 3, 4, or 6 may be sensitive to the sort of scrutiny undertaken by Amnesty International; groups that monitor elections and highlight corruption may be effective with cluster 6; and probably very little can be done to directly influence nations in clusters 5 or 7.

The fourth and final point I want to emphasize is that this paper represents the perspective of a positivist data analyst, rather than a social scientist. I recognize that there are legitimate concerns about measurement without theory, exploratory fishing trips, dimensional disaggregation, cross-cultural validity, proper conceptual definitions, and various other issues that loom large in this literature. Nonetheless, I think that it is even more important not to be paralyzed by these difficulties, but rather to proceed with all possible speed. If premature analyses lead us to false conclusions, then common sense or simple experience will soon point out the errors more clearly than philosophical debate can do. And in this subject, there is a loss function attached to delay, as well as to error.

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IX.

Editor's Conclusions

Irving Brecher

In the Introduction, I made reference to the wide variety of issues slated for discussion in this volume. Still, even the most perceptive reader could hardly have anticipated the scope and scale of the exercise on which he or she was about to embark.

Now, 26 papers and more than 500 pages later, it would be presumptuous, indeed, to engage in any process of overall synthesis or assessment. It would be heroic, as well, to single out particular papers for in-depth treatment or even special mention. Every contribution carries its own set of interesting messages. Readers will no doubt make their own choices in terms of lucidity, analytical quality, and policy relevance. For my part, I wish only to share some thoughts generated by a rewarding editorial experience.

Perhaps most striking of all is the realization that we have come so far since the Universal Declaration of Human Rights. Who, in the twilight of the 1940s, could have realistically envisaged the human rights revolution that would be leading us into the 1990s? Interacting with the economic and technological forces of global interdependence, this flowering of human rights may well have fashioned four decades of change more profound than anything that had gone before.

The continuing adoption of UN and regional declarations and covenants is, in itself, impressive. But there is more—much more; for example, the frequent and unequivocal reaffirmation of the principle of indivisibility as between civil-political rights on the one hand and economic, social, and cultural rights on the other; the creation of institutional mechanisms for multilateral protection and promotion of human rights; the expanding international responsibilities assumed by Third World countries in human rights matters; the growing stature of the "rights to development," so significant because it defines development in terms of realizing "all human rights and fundamental freedoms"; the increasing efforts of developed countries to integrate human rights into their foreign policy and their development assistance programs.

Canadians are entitled to claim that this country, though a late starter, has become an active participant in the human rights revolution. Canada's voice grows louder and clearer in the United Nations, at Helsinki, and on other international fronts. Domestically, a once-reluctant Supreme Court of Canada moves us steadily, through the Charter of Rights and Freedoms, towards the leading edge of human rights law. And *vis-à-vis* the Third World, parliament's landmark Winegard Report has given a central role to human rights in Canadian economic aid; while legislation has been enacted to establish an International Centre for Human Rights and Democratic Development.

There is, of course, a long road yet to be travelled. The search for more effective international techniques of human rights enforcement goes on. Multilateral development agencies, like the World Bank, are only beginning to recognize that they have a duty to take human rights into account in the design and execution of their projects and programs. Above all, the international community must find better ways of giving *individuals* (as against states) access to the UN and regional bodies set up to curb human rights abuse.

Canada, to repeat, is certainly making its mark. But there remains ample room for disquiet. Within UN, Commonwealth, and Francophone settings, why have we not pushed harder against gross, well-documented violations of human rights in particular countries? Why have we not voted against multilateral agency loans to gross-violator governments? How could the Canadian government strongly endorse the Winegard Report while rejecting its call for greater human rights openness and precision in aid policy making? Why, by the time of writing—a year after parliamentary authorization—had Canada's human rights centre not become operational? There are those who argue that a resistant mind-set in the federal bureaucracy continues to forestall an effective integration of human rights into Canadian foreign policy. The jury would seem to be out on this issue. One thing is clear, however: the government's performance has not thus far measured up to its rhetoric.

Meanwhile, world events keep unfolding at a dizzying pace on the human rights stage—Poland, Chile, China, South Africa, Nicaragua, Hungary, Colombia, Pakistan. The full country list would be very long indeed. Obviously, it could not tell a simple story of unimpeded progress. And a majority of mankind is still governed by authoritarian regimes. But who can doubt that the ubiquitous demand for freedom will ultimately prevail? And who can deny the special urgency of the challenge in the Third World, where extreme economic, social, and political deprivations so often converge?

The question is not whether that struggle for human rights will accelerate in the 1990s and beyond, but whether developed countries like Canada will become more effective participants. Then, too, it is not a question of imposing Canadian-type values and structures on other nations, but of joining in a revitalized global effort to enforce internationally accepted norms of human dignity and material welfare.

Never have Canadians so vigorously debated the place of human rights in this country's foreign policy and development assistance programs. How far the enthusiasm for change gets translated into action depends largely on three interrelated factors: (1) the strength of special-interest groups who would subordinate human rights to commercial or security goals; (2) the political will of our government policy makers to overcome such pressures and reconcile competing objectives; and (3) the quality of knowledge and understanding that can be generated by the "human rights and development" community. Past experience and a sense of realism compel recognition that the commercial and defence lobbies are no easy match for the government's stated desire to move rapidly forward on the human rights front. It is no less realistic, however, to believe in the power of ideas: a reinforced political will can indeed overcome.

One of the notable things about human rights research is that is has to cover a multitude of disciplines—law, economics, political science, sociology, and more. The present volume makes this abundantly clear. It also points to a variety of human rights questions to which Canadian scholars and specialists should be seeking more definitive answers, through interdisciplinary techniques whenever appropriate.

How, for example, can we most cogently distinguish between "basic" and "other" human rights? What are the salient linkages between socio-economic and civil-political rights, and between those rights and Third World development? To what extent do civil and political rights differ from social and economic rights in terms of the meaning of "violation" and the remedial action required? Are there significant differences in perception of human rights as between the developed and developing countries, and, if so, what are the major policy implications of such differences? What are the most serious gaps in the UN system of human rights protection, and how can they best be filled? What lessons can Canadians learn from the international human rights policies of such forward-looking countries as the Netherlands, Norway, Denmark, and Sweden? What are the most useful ways of measuring human rights performance, and how much policy weight should be given to statistical indexes?

There is a good deal of light to be shed. But these are difficult questions, and one cannot expect instant answers. Meanwhile, policy making goes on. Even now, though, if Canada's governing politicians really mean what they say, they can draw plenty of support from what is already known about the ingredients of an effective foreign policy on human rights. To begin with, it does *not* entail drastic cuts in the foreign aid budget at a time when fragile Third World democracies are struggling to cope with crushing external debt; nor broad-brush forgiveness of debt without any regard for debtors' human rights performance; nor approving multilateral loans to developing countries that grossly violate human rights; nor extending bilateral loans to any country weeks or months after protesting such violations.

On the positive side, the Canadian government should be constantly stressing that protecting and promoting human rights abroad is a matter of moral principle, global treaty obligation, *and* national self-interest; also that the most strenuous efforts will always be made to pursue other foreign policy goals along lines which do not derogate from human rights. Canada and like-minded countries should be leading the search for sharper teeth in the UN enforcement system on human rights; and for clear guidelines ensuring that multilateral development institutions give prominence to human rights in selecting borrowers and implementing projects.

Acting on its own, Canada should take a number of important steps forward: rescind the budget cuts on foreign aid; open the aid-giving process to full public scrutiny with respect to human rights; strengthen aid conditionality by developing a quantitative index or indexes of human rights performance; regularize in-depth training for an expanded staff of human rights officers in CIDA and the Department of External Affairs; enlarge the "centre of excellence" program through federal funding for human rights research in Canadian universities and other non-government organizations; proceed quickly and imaginatively to make up for the precious year lost by the new International Centre for Human Rights and Democratic Development. One final point: it is time for a grown-up Canada to discard the myth of "the U.S. boogeyman," join the Organization of American States, and become a full partner in one of the most advanced regional systems for protecting and promoting human rights. (On October 27, 1989, as the book was going to press, Prime Minister Mulroney announced that Canada had, in fact, decided to join the OAS.)

Here, again, is one editor who believes that solid ideas, detached from narrow self-interest, can have a powerful impact on public policy. This book symbolizes the hope that they will.

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